

VOLUME NO. 37

OPINION NO. 26

APPROPRIATIONS OF LEGISLATURE - Regional Service Centers for special education, method of establishing; SCHOOLS - Regional Service Centers for special education, method of establishing; SPECIAL EDUCATION - Regional Service Centers for special education, method of establishing; SUPERINTENDENT OF PUBLIC INSTRUCTION - Regional Service Centers for special education, method of establishing; REVISED CODES OF MONTANA, 1947 - Section 75-7803(12).

HELD: House Bill 145 requires the Superintendent of Public Instruction to establish the regional special education services referred to in section 75-7803(12) and section 4 of House Bill 816, Forty-Fifth Legislative Session (1977), by negotiating contracts with local school districts whereby the contracting local districts agree to furnish regional special education services to be compensated from the Regional Service Centers' appropriation.

17 May 1977

Georgia Ruth Rice
Superintendent of Public Instruction
State Capitol Building
Helena, Montana 59601

Dear Superintendent Rice:

You have requested my opinion concerning statutory interpretation of legislation recently enacted by the Forty-Fifth Legislative Session (1977), designated as House Bill 145.

The legislation in question appropriates moneys to the Superintendent of Public Instruction to fund "Regional Service Centers" but restricts the use of those funds, as follows:

The appropriation for Regional Service Centers shall be used by the Superintendent of Public Instruction to contract for services with local school districts. No employee of the state shall be compensated from the appropriation to the centers.

Your question is whether the conditions attached to the appropriation require you to negotiate contracts directly with local school districts whereby the contracting local districts agree to furnish regional special education services to be compensated from the Regional Service Centers' appropriation.

Regional Service Centers for children in need of special education were initially provided for by a 1975 amendment adding subsection (12) to section 75-7803, R.C.M. 1947. Section 75-7803 was again amended by the Forty-Fifth Legislative Session, House Bill 816, which was signed by the Governor on April 29, 1977, to provide in relevant part:

The superintendent of public instruction should supervise and co-ordinate the conduct of special education in the state by:

* * *

(12) administering regional special education services for children in need of special education in accordance with policies of the board of public education.

House Bill 816 also added a new R.C.M. section which provides as follows:

Section 4. There is a new R.C.M. section that reads as follows:

Regional special education services.

(1) There is established a regional special education services program to provide special education services to handicapped children who cannot efficiently be served by a program operated by an individual school district or by several cooperating school districts. Regional special education services shall be limited to:

(a) providing direct services to handicapped children WHO are not ADEQUATELY served by a district program;

(b) initiating special services for handicapped children as a service model which may then be continued as an individual district or cooperative district program;

(c) coordinating and conducting in-service training for special education and local district personnel in the region; and

(d) assisting local districts in the region in the development and expansion of individual district or cooperative district programs.

(2) Funds for such services shall be appropriated to the superintendent of public instruction from state equalization funds and shall be available to support regional special education programs and services. Such funds may be supplemented by appropriate federal funds. The authorization for regional special education services for children expires on June 30, 1980.

House Bill 145, signed into law on May 11, 1977, funds the regional special education services referred to in section 75-7803(12) and the new R.C.M. section.

The provisions for regional special education services do not specify the mode or manner in which such services are to be established. However, the portions of House Bills 145 and 816 referred to above are contemporaneous legislation on the same subject matter and must be construed together and harmonized. City of Billings v. Smith, 158 Mont. 197, 212, 490 P.2d 221 (1971).

The language in House Bill 145 must be given its ordinary meaning. See Security Bank & Trust Co. v. Connors, 550 P.2d 1313, 1317 (1976). It says that the funds for regional special education services "shall be used *** to contract *** with local school districts." The use of the word "shall" is mandatory, Abshire v. School District, 124 Mont. 244, 245, 220 P.2d 1058 (1950), and exclusive, Crosby v. Board of Hail Insurance, 113 Mont. 470, 473, 129 P.2d 99 (1942). I understand under the present method employed to provide regional special education services, numerous employees have been hired directly. House Bill 145 by directing "no employee of the state shall be compensated from the appropriation to the centers," leaves no doubt that the Legislature intended to eliminate the current method of providing regional services and to prescribe the mode and

manner in which regional services will hereafter be provided. Employees of local school districts are not employees of the state. Cf. State ex rel Quintin v. Edwards, 38 Mont. 250, 99 P. 940 (1908).

THEREFORE, IT IS MY OPINION:

House Bill 145 requires the Superintendent of Public Instruction to establish the regional special education services referred to in section 75-7803(12) and section 4 of House Bill 816, Forty-Fifth Legislative Session (1977), by negotiating contracts with local school districts whereby the contracting local districts agree to furnish regional special education services to be compensated from the Regional Service Centers' appropriation.

Very truly yours,

MIKE GREELY
Attorney General