

VOLUME NO. 37

OPINION NO. 96

HOLIDAYS - Public employees; HOLIDAYS - "School holidays" and "legal holidays;" HOLIDAYS - Nonteaching school employees as public employees; REVISED CODES OF MONTANA, 1947 - Sections 19-107, 59-1007, 59-1009 and 75-7406.

HELD: Nonteaching school district employees are public employees and thus entitled to the legal holidays enumerated in section 19-107, R.C.M. 1947, just as are all other public employees. They are not entitled to the school holidays enumerated in section 75-7406, R.C.M. 1947.

6 December 1977

David E. Fuller, Commissioner
Department of Labor and Industry
1331 Helena Avenue
Helena, Montana 59601

Dear Mr. Fuller:

You have requested my opinion concerning the following question:

Are nonteaching school employees to be given days off on the legal holidays enumerated in section 19-107, R.C.M. 1947, for public employees or are they to be given days off on the school holidays defined in section 75-7406, R.C.M. 1947?

Holidays to which nonteaching school district employees are entitled present an apparent conflict between "legal holidays," defined in section 19-107, R.C.M. 1947, and "school holidays" defined in section 75-7406, R.C.M. 1947, which must be resolved.

Section 75-7406 defines "school holidays" as those enumerated days on which "pupil instruction and pupil instruction related days" shall not be conducted. "Pupil instruction days" defined in section 75-7405, R.C.M. 1947, include those days on which teachers are attending state teachers conventions, parent-teacher conference days, etc. All of the sections in that chapter were enacted at the same time in sections 365 to 371 of chapter 5, Laws of Montana, 1971. The Legislature intended only to deal with school teachers since nonteaching school employees do not attend state teachers conventions nor participate in parent-teacher conferences. Had the Legislature intended to include nonteaching employees within this chapter they could have specifically provided for them.

It is significant that section 59-1007, R.C.M. 1947, which exempts certain employees from the normal vacation and holiday provisions for state employees only exempts "elected state, county or city officials or schoolteachers." (Emphasis added.) Bitney v. School District No. 44 et al, Mont. _____, 535 P.2d 1273 (1975) discusses this section but does not affect this opinion. Bitney, supra, dealt with a school superintendent and the question of whether he was a "teacher." In that instance a contract between Bitney and the school district enumerated that he was qualified to teach in the school district and he was allowed certain other benefits allowed other "teachers" in the district. This is not the case with nonteaching school district employees. It is apparent that school teachers and only school teachers were exempted from these provisions because the Legislature was aware that they had certain periods off during the school year which no one else enjoyed. The fact that nonteaching employees were not

exempted indicates the Legislature did not intend to exempt them. In this regard the Montana Supreme Court has said, in Softich v. Baker, _____ Mont. _____, _____ P.2d _____, 33 St. Rep. 1111 (1976) that:

In determining the meaning of a statute, the intent of the legislature is controlling. Section 93-401-16, R.C.M. 1947. Such intent shall first be determined from the plain meaning of the words used, if possible, and if the intent can be so determined the courts may not go further and apply any other means of interpretation. (Citations omitted.)

The Court has held in Helena Valley Irrigation District v. State Highway Commission, 150 Mont. 192, 433 P.2d 791 (1967) that the "express mention of one matter in a statute excludes other similar matters not mentioned."

Section 59-1009 employs the language, "Any employee of the State of Montana, or any county or city thereof..." This language is found continually in statutes governing state employees and is always interpreted broadly. In the most recent case construing this language, Teamsters v. Cascade County School District No. 1, 162 Mont. 277, 511 P.2d 339, the teamsters working for a school district claimed certain annual leave under a section of the same chapter, i.e., section 59-1001, R.C.M. 1947. The Court held the non-teaching employees were employees of a state agency and covered by the statute. This ruling controls the entire chapter. See also, 36 OP. ATT'Y GEN. NO. 35.

Where the Legislature has chosen to exclude school teachers from statutory coverage it has done so expressly. Other employees of a school district are governed by the laws relating to vacations and holidays for state employees. State employees have a right to legal holidays off with pay and when required to work on those days must be given additional compensation.

Nonteaching school district employees are public employees, as the Court has said, and since public employees are entitled to the legal holidays enumerated in section 59-1009, R.C.M. 1947, then nonteaching school employees are entitled to the same "legal holidays" as other public employees. It is obvious that they are not entitled to "school holidays" in addition to the regular "legal holidays."

This opinion is intended to clarify apparent ambiguity in 36 OP. ATT'Y GEN. NO. 105. That opinion concerning this specific question is hereby overruled.

Since the middle of a school term is in progress and school districts have formulated contracts for the year based on the previous Attorney General's opinion this opinion cannot take effect until the 1978-79 school year.

THEREFORE, IT IS MY OPINION:

Nonteaching school district employees are public employees and thus entitled to the legal holidays enumerated in section 19-107, R.C.M. 1947 just as are all other public employees. They are not entitled to the school holidays enumerated in section 75-7406, R.C.M. 1947.

Very truly yours,

MIKE GREELY
Attorney General