

VOLUME NO. 38

OPINION NO. 5

SCHOOLS - Compulsory attendance, age and grade completion requirements;

MONTANA CODE ANNOTATED - Sections 20-5-102 and 20-5-103;
REVISED CODES OF MONTANA, 1947 - Sections 75-6303, 75-6304.

HELD: Sections 20-5-102 and 20-5-103, MCA, require compulsory school attendance for any student who has reached seven years of age prior to the first day of school, and has not yet reached his sixteenth birthday, and has not yet completed the work of the eighth grade.

23 January 1979

Gordon R. Hickman, Esq.
Wheatland County Attorney
Wheatland County Courthouse
Harlowton, Montana 59036

Dear Mr. Hickman:

You have requested my opinion on the following question:

Is a student who is fifteen years of age, and who has completed the eighth grade, subject to the compulsory school attendance provisions of sections 20-5-102 and 20-5-103, MCA (formerly 75-6303 and 75-6304, R.C.M. 1947)?

Section 20-5-102(1) (formerly section 75-6303, R.C.M. 1947) provides in pertinent part:

Any parent, guardian, or other person who is responsible for the care of any child who is 7 years of age or older prior to the first day of school in any school fiscal year and has not yet reached his 16th birthday and who has not completed the work of the 8th grade shall cause the child to be instructed in the program prescribed by the board of public education pursuant to 20-7-111.

The same operative language is found in section 20-5-103 MCA. There are exceptions in both sections which are not relevant here. The plain, unambiguous language of these two sections provides compulsory school attendance for any child who:

1. has reached seven years of age prior to the first day of school, and
2. who has not yet reached his sixteenth birthday, and
3. who has not completed the work of the eighth grade.

Clearly, each of the three criteria apply and all three must be met before the compulsory attendance requirements are satisfied.

This conclusion is reinforced by the fact that 20-5-102 and 20-5-103, MCA, were amended in 1973 and 1977 respectively to substitute the word "and" for the word "or" before the requirement that the child finish the work of the eighth grade. (1973 Mont. Laws, ch. 91, § 3; 1977 Mont. Laws, ch. 266, § 8.) Thus, any opinions on this subject prior to these amendments may no longer be relied upon.

THEREFORE, IT IS MY OPINION:

Sections 20-5-102 and 20-5-103, MCA, require compulsory school attendance for any student who has reached seven years of age prior to the first day of school, and has not yet reached his sixteenth birthday, and has not yet completed the work of the eighth grade.

Very truly yours,

MIKE GREELY
Attorney General