

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 39

OPINION NO. 11

SCHOOL DISTRICTS - American Indian Studies Act, applicability to teachers;  
SCHOOLS - Teachers, American Indian Studies Act, Board of Public Education, applicability of the Act;  
TEACHERS - American Indian Studies Act, applicability of requirements;

OPINIONS OF THE ATTORNEY GENERAL

MONTANA CODE ANNOTATED - Sections 20-2-121, 20-4-102, 20-4-111, 20-4-211 to 20-4-214;  
OPINIONS OF THE ATTORNEY GENERAL - 37 Op. Att'y Gen. No. 75 (1977).

HELD: Section 20-4-213, MCA, provides that the Board of Public Education does not have the authority to require that all certified teachers complete six in-service credits in Indian studies.

2 April 1981

Marjorie W. King, Chairman  
Board of Public Education  
33 South Last Chance Gulch  
Helena, Montana 59601

Dear Ms. King:

You have requested my opinion on the following question:

Does the Board of Public Education have the authority to require that all certified teachers complete six in-service credits in Indian studies pursuant to section 20-4-213, MCA?

The applicable statutes (§ 20-4-211 to 214, MCA) have changed significantly since I issued 37 Op. Att'y Gen. No. 75 in October 1977. Prior to the 1979 amendments, section 20-4-213, MCA, absolutely required that teachers in schools on or near Indian reservations complete a course in American Indian studies.

In 1979, the Legislature amended section 20-4-213, MCA, to provide:

(1) Any board of trustees for an elementary or secondary public school district on or for a public school located in the vicinity of an Indian reservation where the enrollment of Indian children qualifies the school for federal funds for Indian education programs may require that all of its certified personnel satisfy the requirements for instruction in American Indian studies as defined in 20-4-211. This requirement must be a local district requirement with enforcement and administration solely the responsibility of the local board of trustees.

OPINIONS OF THE ATTORNEY GENERAL

(2) Members of boards of trustees and all noncertified personnel in public school districts on or in the vicinity of Indian reservations are encouraged to satisfy the requirements for instruction in American Indian studies as defined in 20-4-211.

The difference between the present statute and the former one is clear. The Indian studies requirement is no longer mandatory, but rather is discretionary with the local school board. Most significantly, the Legislature provided that any Indian studies requirement "must be a local district requirement with enforcement and administration solely the responsibility of the local board of trustees."

Therefore, section 20-4-213, MCA, on its face, excludes the possibility of an Indian studies requirement mandated by the Board. I can find nothing in the Board's statutory powers to alter this conclusion. Section 20-2-121, MCA, requires the Board to establish a system for teacher certification pursuant to sections 20-4-102 and 20-4-111, MCA. The latter section is inapplicable here, and the former provides that any teacher certification policies must be "in accordance with" the provisions of Title 20 of the Code. One of those provisions is section 20-4-213, MCA.

THEREFORE, IT IS MY OPINION:

Section 20-4-213, MCA, provides that the Board of Public Education does not have the authority to require that all certified teachers complete six in-service credits in Indian studies.

Very truly yours,

MIKE GREELY  
Attorney General