

VOLUME NO. 40

OPINION NO. 68

DEPARTMENT OF ADMINISTRATION - Authority to classify state librarian and historical society director;
EMPLOYEES, PUBLIC - Classification of state librarian and historical society director;
HISTORICAL SOCIETY - Classification of director;
SALARIES - Classification of state librarian and historical society director;
STATE LIBRARY - Classification of state librarian;
STATUTORY CONSTRUCTION - Repeal by implication;
MONTANA CODE ANNOTATED - Sections 2-18-103, 2-18-104, 2-18-201, 2-18-205, 2-18-207, 22-1-102, 22-3-107.

HELD: The Classification Bureau of the Department of Administration has the authority to classify and to establish the grade level for the positions of state librarian and director of the Montana Historical Society.

21 September 1984

Henry McClernan, Chairman
Montana State Library Commission
151 East Sixth Avenue
Helena MT 59620

George O'Connor, President
Montana Historical Society
Board of Trustees
225 North Roberts
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Gentlemen:

You have requested my opinion on the following questions:

1. Does the Board of Trustees of the Montana Historical Society or the Classification Bureau of the Department of Administration have the authority to set the salary for the director of the Montana Historical Society?
2. Does the Montana State Library Commission or the Classification Bureau of the Department of Administration have the authority to set the salary for the state librarian?

Your questions have arisen due to an apparent conflict between statutes in Title 2, MCA, governing classification and pay of state employees and statutes in Title 22, MCA, giving authority to your respective boards to set salaries for the positions in question.

Specifically, section 22-3-107, MCA, delineates the powers and duties of the board of trustees of the Montana Historical Society, including the power "(3) to appoint a director, fix his salary, and prescribe his duties and responsibilities." Similarly, the State Library Commission is given the following authority by section 22-1-102, MCA:

Librarian and assistants. The commission shall employ as its executive officer a librarian, who is a graduate of an accredited library school and is not a member of the commission, for such compensation as the commission considers adequate. The executive officer shall perform the duties assigned by the commission and serve at the will of the commission. The commission may also employ such other assistants as are required for the performance of the commission's work. In addition to their salaries while on commission business, the librarian and assistants shall be allowed their travel expenses, as provided for in 2-18-501 through 2-18-503, as amended.

The authority to hire and to set the compensation for the librarian was added to the statute in 1945. With regard to the Historical Society director, the power to appoint and to set salary was given to the board in 1963. None of the amendments to sections 22-3-107 and 22-1-102, MCA, have affected the provisions regarding salary.

On the other hand, the 1973 Legislature enacted a comprehensive plan for classification and pay of all State employees, based upon the principle of similar pay for similar work. Tit. 2, ch. 18, pt. 2, MCA. The Department of Administration was directed to "develop a personnel classification plan for all state positions and classes of positions in state service ... except those exempt in 2-18-103 and 2-18-104." § 2-18-201, MCA. (Emphasis added.) Neither the state librarian nor the director of the Historical Society is included within the exemptions of sections 2-18-103 and 2-18-104, MCA. It is my understanding that the two positions in question have been classified by the Department of Administration since the implementation of the classification and pay plan in 1975.

According to the principles of statutory construction, statutes dealing with the same subject matter are to be construed together and harmonized if possible. Crist v. Segna, 38 St. Rptr. 150, 622 P.2d 1028 (1981). However, I find that an irreconcilable conflict does exist between sections 22-3-107 and 22-1-102, MCA, and the Classification and Pay Plan Act. The Classification and Pay Plan Act is general legislation concerning the salaries of State employees, while sections 22-3-107 and 22-1-102, MCA, are special statutes specifically dealing with the salaries of the two positions in question. On the other hand, the Classification and Pay Plan Act was enacted later than the two special statutes. In this situation, two conflicting principles of statutory construction lead to two opposite conclusions. The Montana Supreme Court recently encountered a similar situation in Dolan v. School District No. 10, 38 St. Rptr. 1903, 636 P.2d 825 (1981). An irreconcilable conflict existed between the Human Rights Act and a special statute establishing a mandatory retirement age for teachers and principals. The Court noted that the Human Rights Act was general legislation enacted later than the mandatory retirement statute, and further stated:

[T]his Court also acknowledges the existence of conflicting rules of statutory construction with regard to this particular situation. Generally, where statutes irreconcilably conflict, the latest statute supersedes the prior enactment. State v. State Board of Land Commissioners (1960), 137 Mont. 510, 353 P.2d 331. However, where general statutes and special statutes are involved, special statutes normally prevail over general. Teamsters, Etc., Local 45 v. Montana Liquor Con. Bd. (1970), 155 Mont. 300, 471 P.2d 541.

636 P.2d at 828. In determining which rule of construction to apply, the Court relied upon the following quotation from State ex rel. State Aeronautics Commission v. Board of Examiners, 121 Mont. 402, 417, 194 P.2d 633, 641 (1948):

[A] later statute general in its terms and not expressly repealing a prior special or specific statute, will be considered as not intended to affect the special or specific

provisions of the earlier statute, unless the intention to effect the repeal is clearly manifested or unavoidably implied by the irreconcilability of the continued operation of both, or unless there is something in the general law or in the course of legislation upon its subject matter that makes it manifest that the legislature contemplated and intended a repeal.

The Court found that the Legislature manifested its intention that the Human Rights Act impliedly repealed the mandatory retirement provision. The Human Rights Act contains broad antidiscrimination provisions and very explicit and limited exceptions. I am guided by the Dolan opinion in resolving your questions.

When the Legislature directed the Department of Administration to develop a classification and pay plan, its purpose was to eliminate the salary inequities which had existed prior to 1973 among the various State agencies. Each agency had its own salary plan and State employees performing similar work were not receiving similar pay. The goal of the Legislature was to establish uniformity and equity in pay. This intent was expressed by the Legislature in House Joint Resolution 37, 1975 Mont. Laws, which integrated the salary schedules into the classification plan and provided:

This wage and salary plan is in lieu of any other plan or system of pay increases for classified state employees.

Further, the Classification Act provides that the Department of Administration is to have exclusive authority for classification and pay of nonexempted positions. See §§ 2-18-205, 2-18-207, MCA. The list of exemptions contained in section 2-18-103, MCA, has been amended numerous times in order to exempt positions which were originally encompassed by the classification system. It is clear that the Legislature views section 2-18-103, MCA, as an exclusive list of specific exemptions. If a position is not exempted by sections 2-18-103 or 2-18-104, MCA, then the intent of the Legislature is to include the position in the classification plan.

While I recognize that repeals by implication are not favored, Kuchan v. Harvey, 179 Mont. 7, 585 P.2d 1298 (1978), It would frustrate the purpose of the Classification and Pay Plan Act to hold that the positions of state librarian and director of the Montana Historical Society are exempt from classification where the Legislature has not expressly approved such exemption in section 2-18-103, MCA. Therefore, I conclude that the provisions of sections 22-3-107(3) and 22-1-102, MCA, which authorize the Board of Trustees of the Historical Society and the State Library Commission to set salary, are superseded by the Classification and Pay Act, Tit. 2, ch. 18, pts. 1 to 3, MCA. The board and the commission retain the authority to hire and to assign duties and responsibilities.

THEREFORE, IT IS MY OPINION:

The Classification Bureau of the Department of Administration has the authority to classify and to establish the grade level for the positions of state librarian and director of the Montana Historical Society.

Very truly yours,

MIKE GREELY
Attorney General