

VOLUME NO. 43

OPINION NO. 66

EDUCATION - Calculation of average number belonging;  
PUBLIC FUNDS - Calculation of average number belonging;  
PUBLIC INSTRUCTION, SUPERINTENDENT OF - Calculation of average  
number belonging;  
SCHOOL DISTRICTS - Calculation of average number belonging;  
MONTANA CODE ANNOTATED - Section 20-9-311(3).

HELD: School districts must, for purposes of calculating ANB, aggregate the numbers of full-time pupils in all schools in the district, except when a school of the district is located more than three miles beyond the incorporated limits of a city or town or when a school of the district is located more than three miles from another school of the district.

July 18, 1990

Robert L. Deschamps III  
Missoula County Attorney  
Missoula County Courthouse  
Missoula MT 59802

Dear Mr. Deschamps:

You have requested my opinion on a question regarding section 20-9-311(3), MCA, and the calculation of "average number belonging" (ANB).

Your question is phrased as follows:

For purposes of calculating "average number belonging" (ANB) under section 20-9-311(3), MCA, may a school district count students separately in separate schools if the schools are three or more miles from incorporated limits of a city or town, or must the schools also be three or more miles from another school in the district?

The relevant portion of section 20-9-311, MCA, was enacted by the Montana Legislature in 1987 as HB 340. That section provides, in pertinent part:

(3) The average number belonging of the regularly enrolled, full-time pupils for the public schools of a district must be based on the aggregate of all the regularly enrolled, full-time pupils attending the schools of the district, except that when:

(a) a school of the district is located more than 3 miles beyond the incorporated limits of a city or town or from another school of the district, all of the regularly enrolled, full-time pupils of the school must be calculated individually for ANB purposes[.] [Emphasis added.]

Your question arises because it has been suggested that the legislative intent of the statute compels the conclusion that the word "or" be read as "and."

The Montana Supreme Court has repeatedly stated the standard and method by which legislative intent is to be established.

The intention of the legislature must first be determined from the plain meaning of the words used, and if interpretation of the statute can be so determined, the courts may not go further and apply any other means of interpretation. [Citations omitted.]

Dunphy v. Anaconda Company, 151 Mont. 76, 80, 438 P.2d 660, 662 (1968). The Montana Supreme Court has consistently followed the teaching of Dunphy holding that the intention of the Legislature is to be ascertained from the plain meaning of the words used in the statute, and if the intent can be determined from the plain meaning of the statutory words, other means of interpretation may not be used. The role of the court, and one that this office must also follow when called upon to review statutes and their construction, is to "declare what in terms or in substance is contained in the statute and not to insert what has been omitted." Dunphy, 151 Mont. at 80, 438 P.2d at 662. See State v. Thompson, 46 St. Rptr. 1065, 1070, \_\_\_ P.2d \_\_\_ (1990), in which the Montana Supreme Court noted: "[T]he business of courts, however, is to interpret statutes, not to rewrite them, nor to insert words not put there by the legislature." It is presumed that the Legislature understood ordinary and elementary rules of construction of the English language when it enacted a law. State v. Miller, 231 Mont. 497, 517, 757 P.2d 1275, 1287 (1988).

In the case of section 20-9-311(3)(a), MCA, the words of the Legislature are clear. School districts may count students by separate school for ANB purposes if the school buildings are (1) more than three miles beyond the incorporated limits of a city or town, or (2) three miles from another school in the district. § 20-9-311(3)(c), MCA.

As noted above, when the language of a statute is as clear as this statute's, it would be inappropriate for a court to look at means of interpreting the statute other than the plain words. However, even if it were appropriate to refer to the legislative history, it does not support a different reading from that compelled by the statute's plain meaning. During hearings on the legislation, Gene Donaldson, sponsor of the bill, testified that

[i]t dealt with the method of determining average number belonging within the schools. Currently, the law allows that each school district is computed separately unless they are within an incorporated city. He said he has found current situations where there is one school across the street from another school and they were receiving their ANB individually. He said the bill would direct schools to compute their ANB on a total unless they are three miles or further apart.

House Education Committee, February 6, 1987. This legislative history does not indicate that both prongs of section 20-9-311(3)(a), MCA, must be met before a school district can calculate ANB individually. Therefore, even if the statute were unclear or ambiguous, the legislative history does not indicate that school districts must satisfy both prongs of the statute in their calculation of ANB.

THEREFORE, IT IS MY OPINION:

School districts must, for purposes of calculating ANB, aggregate the numbers of full-time pupils in all schools in the district, except when a school of the district is located more than three miles beyond the incorporated limits of a city or town or when a school of the district is located more than three miles from another school of the district.

Sincerely,

MARC RACICOT  
Attorney General