

MINUTES OF THE MEETING

PUBLIC HEALTH, WELFARE AND SAFETY COMMITTEE

February 5, 1979

The eleventh meeting of the Public Health, Welfare and Safety Committee met in Room 410 of the State Capitol at 1:00 p.m.

ROLL CALL: All members were present except Senator Rasmussen.

CONSIDERATION OF SENATE BILL 109: Senate Bill 109 is an act to clarify the relationship between the Department of Health and Environmental Sciences and local boards of health with respect to the validation by local health officers of certain licenses issued by the Department of Health and Environmental Sciences and to limit certain supervisory functions of the department. It was heard in Committee on January 24, 1979.

The Committee members received a revised copy of suggested amendments to Senate Bill 109 (see Attachment "A"). Dennis Taylor, Legislative Council, explained the amendments on Attachment "A" and the amendments on the original sheet of proposed amendments (see Attachment "B"). Senator Himsl asked about the sanitarian and local health officer requirement. Chairman Olson explained that every county is under the jurisdiction of a sanitarian although some counties do share one sanitarian, but not every county has a health officer. Senator Himsl moved that the amendments numbered 2, 4, and 6 on Attachment "A" be adopted. The motion was seconded and carried unanimously.

Mr. Taylor stated that amendment number 7 on Attachment "A" is patterned off an existing law for environmental waste. It provides due process of law. Senator Norman asked if the local health officer is unable or won't act where the individual goes next. Mr. Taylor said that they appeal to district court. Doug Olson stated that this puts a 15-day limitation on an answer. Chairman Olson questioned the problem of mail service. Mr. Olson stated that it is much more difficult to revoke a license once issued. If it is not issued, it gives the party a way to appeal. Senator Ryan moved adoption of amendment number 7 on Attachment "A." The motion passed unanimously.

The Committee went on to amendment number 8 on Attachment "A". Chairman Olson asked if each county has a local board of health. Doug Olson stated that the county commissioners plus some other individuals means local board of health unless a board is otherwise defined. The Committee referred to the Code which defines the county board of health as consisting of county commissioners or five persons appointed by the county commissioners.

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Senator Ryan feels that the last line of the amendment is too broad. Discussion followed on this. Senator Himsl moved that amendment number 8 on Attachment "A" be amended to delete the words ", and any other interested person" following "department." The motion passed unanimously. Senator Ryan moved that amendment number 8 as amended be adopted. The motion carried unanimously.

Senator Lensink moved that we adopt amendments number 6 and 7 on Attachment "B." The motion carried unanimously.

Mr. Taylor explained that amendment number 8 on Attachment "B" is for codification purposes. Senator Palmer moved that amendment number 8 on Attachment "B" be adopted. The motion was seconded and passed unanimously.

ACTION ON SENATE BILL 109: Senator Ryan moved that Senate Bill 109 as amended do pass. A roll call vote was taken, and the motion passed unanimously.

CONSIDERATION OF SENATE BILL 175: Senate Bill 175 is an act to provide for immunization of pupils in public and private schools. It was heard in Committee on January 29, 1979.

Chad Smith, Montana School Boards Association, distributed copies of some amendments (see Attachment "C") that he is proposing to the originally proposed amendments (see Attachment "D"). Mr. Smith stated that they are supportive of Senate Bill 175 but are concerned about the enforcement. Under the proposed amendments the governing authority would still be responsible for keeping the records. Senator Van Valkenburg, sponsor of Senate Bill 175, stated that the reason that the definition is there for governing authority is to provide some clear definition of who has the authority to take the actions in the rest of the bill. The attorney from the Department of Health stated that the intent of the bill was to hold the individuals who violate the law responsible, and not the school district as a whole. Senator Himsl stated that he understands the school board sets the policy, and the hired agent simply enforces the policy. As an individual board member you have no position at all. Senator Lensink stated that he feels amendments 1 and 2 on Attachment "C" are necessary. the board of trustees is the responsible party. Senator Ryan stated that he feels principals and administrators are simply acting on behalf of their board. The responsibility still lies with the board of trustees. Senator Van Valkenburg said with the amendments it is going to take each board of trustees through the state to take action on this. He feels we could take care of this here. Senator Lensink stated that principals do expell students; but, if there is an appeal,

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it goes to the board who is the ultimate authority. Senator Lensink moved that we adopt amendment number 1 on Attachment "C." Motion carried unanimously. Senator Lensink moved that the Committee adopt amendment number 2 on Attachment "C." The motion was seconded and carried unanimously.

Mr. Smith explained that amendment number 3 of Attachment "C" relates to who is to enforce the public health laws and rules of the state; whether it is the educational facility or the boards. With this amendment the school will keep the records and the health officer can look at the records and enforce the law. Senator Van Valkenburg stated that if the Committee adopts the next two amendments (numbered 3 and 4 on Attachment "C") it might as well kill the bill. He distributed a memorandum establishing constitutionality of Senate Bill 175 (see Attachment "E"). He stated that he feels the law has been pretty well established. Senator Ryan stated that he agrees with Senator Van Valkenburg in this respect. Part of this bill is tracking these children from place to place, and he feels that the tracking process is just as important as the immunization. Senator Lensink asked what happens if a parent defies and says he won't respond. Senator Van Valkenburg stated that on page 5 of the bill it provides for injunctive relief where the health department comes in and takes the action. Senator Lensink stated that he would like to see somewhere in the bill where failure to file a statement within a certain period of time would mean that the parents objected for personal reasons. Senator Norman concurred with Senator Lensink and stated that if it gets to be too much of a problem and the level of immunization is falling way down in the next two years, then we can take a look at it next session. Chad Smith stated that he feels this bill will just set the school up for a law suit. Senator Himsel pointed out that according to page 4, section 7, on enforcement we are not really keeping the youngster out of school. Senator Van Valkenburg feels that we need the weight of exemption from school. He said that California went through this and found you need some sort of a club over their head. Senator Van Valkenburg feels that maybe we should exempt the student for 3, 7 or 10 days; and then, if the parent refuses to sign, it is deemed for personal reasons. Senator Lensink stated that it is contrary to the law and needs to be amended. Mr.

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Taylor stated that the Committee could revise the bill starting on line 4, page 2 by renumbering phrase starting as "a governing" as subsection (1), renumber subsections (1), (2), and (3) to subsections (a), (b), and (c) and create a new subsection (2) which would read along the lines that "failure to act in a reasonable period of time as determined by the board is a refusal on the grounds provided under section 4." Mr. Smith stated that he would like 3 days because that won't be against the Constitution. Senator Lensink moved that we adopt the amendment as stated by Mr. Taylor. Motion was seconded and carried unanimously.

Mr. Smith said that this takes care of the rest of his proposed amendments.

ACTION ON SENATE BILL 175: Senator Palmer moved that Senate Bill 175, as amended, DO PASS. A roll call vote was taken, and the motion carried unanimously.

ADJOURNMENT: There being no further business discussed, the meeting was adjourned at 2:10 p.m.



S. A. OLSON, CHAIRMAN

ROLL CALL  
PUBLIC HEALTH COMMITTEE

46th LEGISLATIVE SESSION - - 1979

Date 2/27/7

SENATE COMMITTEE

## PUBLIC HEALTH

Date 2-5-79

Bill No. 109

Time 1:42 P.M.

Secretary

Chairman

Motion: Do the Senate Bill 109 be Amended

(include enough information on motion--put with yellow copy of committee report.)

SENATE COMMITTEE

## PUBLIC HEALTH

Date 2-5-79

Bill No. 175

Time 2:10 p.m.

NAME	YES	NO
Senator Matt V. Himsel	✓	
Senator Everett R. Lensink	✓	
Senator Bill Norman	✓	
Senator Bob Palmer	✓	
Senator Patrick Ryan	✓	
Senator A. T. Rasmussen, Vice-Chairman	✓	
Senator S. A. Olson, Chairman	✓	

Secretary

Chairman

Motion: Motion to adjourn the House is carried.

(include enough information on motion--put with yellow copy of committee report.)

SUGGESTED AMENDMENTS TO SB 109 (RYAN)

1. Page 3, line 18 (Senator Hims1)  
Following: "officer"  
Insert: ", if there is one,"
2. Page 3, line 18 (Doug Olson, DH & ES)  
Following: "officer"  
Insert: ", or if there isn't one the sanitarian,"
3. Page 4, line 7 (Senator Hims1)  
Following: "officer"  
Insert: ", if there is one,"
4. Page 4, line 7 (Doug Olson, DH & ES)  
Following: "officer"  
Insert: ", or if there isn't one the sanitarian,"

5. Page 4, line 14 (Senator Hims1)  
Following: "officer"  
Insert: ", if there is one,"

6. Page 4, line 14  
Following: "officer"  
Insert: ", or if there isn't one the sanitarian,"

7. Page 4, line 16  
Following: line 15  
Insert: "Section 5. THERE IS A NEW MCA SECTION THAT READS:

Notification of and validation by local health officer. (1) When the department receives an application for a license pursuant to Title 50, chapters 50 through 52, the local health officer in the county where the establishment is located must be notified in writing of the application within 15 days after the department has received the application.

(2) If the department decides to issue a license pursuant to the provisions of Title 50, Chapters 50, 51, or 52, the department shall notify the local health officer in writing.

(3) A license issued by the department under Title 50, chapters 50 through 52 is not valid until signed by the local health officer in the county where the establishment is located.

(4) The local health officer shall, within 15 days after the department has notified the local health officer of its decision to issue a license under Title 50, chapters 50 through 52, make a final decision on whether the license will be validated.

(5) Failure of the local health officer to validate the license within 15 days after its receipt shall be deemed a refusal."

5. Page 4, line 16.

Following: "new Section 5 insert"

Insert: "Section 6. THERE IS A NEW MCA SECTION THAT READS:

Refusal by local health officer -- appeal to board. (1) The local health officer may only refuse to validate a license issued under Title 50, chapters 50 through 52, upon a finding that the requirements of these chapters and any rules implementing them are not satisfied. If the local health officer refuses to validate the license, he shall notify the applicant, the department, and any other interested person in writing.

(2) The applicant or any person aggrieved by the decision of the local health officer not to validate a license may appeal the decision to the local board of health within 30 days after receiving written notice of the local health officer's decision.

(3) The hearing before the local board of health shall be held pursuant to the contested case provisions of the Montana Administrative Procedure Act."

Renumber: all subsequent sections

ATTACHMENT "B"

SUGGESTED AMENDMENTS TO SB 109 (RYAN)

1. Page 3, line 18. (Senator Hims1)

Following: "officer"

Insert: ", if there is one,"

2. Page 4, line 7. (Senator Hims1)

Following: "officer"

Insert: ", if there is one,"

3. Page 4, line 14. (Senator Hims1)

Following: "officer"

Insert: ", if there is one,"

4. Page 4, line 16. (Doug Olson, DH&ES)

Following: line 15

Insert: "Section 5. THERE IS A NEW MCA SECTION THAT READS:

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(4) The local health officer shall, within 15 days after the department has notified the local health officer of its decision to issue a license under Title 50, chapters 50 through 52, make a final decision on whether the license will be validated."

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Following: "new Section 5 insert"

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(2) The applicant or any person aggrieved by the decision of the local health officer not to validate a license may appeal the decision to the board within 30 days after receiving written notice of the local health officer's decision.

(3) The hearing before the board shall be held pursuant to the contested case provisions of the Montana Administrative Procedure Act."

Renumber: all subsequent sections

SB 109 (Continued)

6. Page 5, line 23.

Following: line 22

Insert: "(11) Provide consultation to school and local community health nurses in the performance of their duties;"

Renumber: all subsequent sections

(Ed Mares, Mt. Nur Assn., & Dr. Anderson DH&ES)

7. Page 6, line 6. . .

(Dr. Anderson, DH&ES)

Following: line 5

Insert: "(14) Provide consultation to local boards of health;"

8. Page 6, line 21.

(Staff)

Following: line 20

Insert: "Section 8. THERE IS A NEW MCA SECTION THAT READS:

Codification. Sections 5 and 6 are intended to be codified as an integral part of Title 50 and the provisions contained in Title 50 apply to Sections 5 and 6."

Renumber: all subsequent sections

ATTACHMENT "C"

SENATE BILL NO. 175

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Amend Senate Bill No. 175 as follows:

1. On page 1, line 16, by deleting the words "a trustee" and substituting in lieu thereof the words "the board of trustees".
2. On page 1, starting on line 17, by deleting everything after the word "district" and deleting further all of lines 18 and 19 and substituting in lieu thereof the words "or the administrator of a private school".
3. On page 2, delete lines 4 through 13, being all of section 2.
4. On page 2, delete lines 14 through 20, being all of section 3.
5. On page 4, beginning on line 15, delete everything following the period after the word "enforcement" and deleting further all of lines 16 through 21, being all of subsection (1) of section 7.
6. On page 5 in line 19, delete the words and punctuation "the minor is excluded from school,".
7. By re-numbering the necessary sections and subsections in accordance with the above amendments.

STATEMENT ON SENATE BILL NO. 175  
BEFORE THE SENATE PUBLIC HEALTH COMMITTEE

I appear on behalf of the Montana School Boards Association in support of Senate Bill No. 175 and wish to inform the committee that the Association adopted a resolution at its annual meeting on November 1, 1978 in support of the general concept of immunization of all school children against the more common communicable diseases. However, at the time the resolution was passed, there was no opportunity to examine Senate Bill No. 175 so the means of implementing the concept was not available for examination.

We do, however, have some serious concerns about the manner of enforcement of mandatory immunization and do not feel that it is proper to place the burden of enforcement upon the school districts. We must remember that the primary obligation of school districts is education and that it is the prime responsibility of the Department of Health and other health officials to enforce public health matters. Section 7, subsection 1 of the bill found on page 4 beginning at line 15 provides that the governing authority of any school shall prohibit from further attendance any pupil enrolled who has failed to obtain the immunizations required. In other words, it becomes the duty of the school district to prohibit attendance by the pupil by reason of his parents' or guardian's failure to comply with the law. Any legal action by a parent or student would therefore be against the school district because it is the school that would have offended the individuals by failure to admit the student.

The courts have ruled that every child has a constitutional right to education and therefore it is obvious that any statute that would interfere with that constitutional right would be struck down. See Butler Area School District -v- Butler Education Association, 391 A.2d 1295 (1978).

It is ironic to note that the only person or persons who would bring such an action would be individuals who are trying to test the act, because of the fact that enforcement of the proposed law is so loose as to be really meaningless. All an individual has to do to avoid compliance is to present a written statement indicating that immunization is contrary to the personal beliefs of that individual and he is thereupon exempted from compliance. Any reasonable person not desiring to comply would readily sign such a statement. We are confident that because of the many test cases brought against school districts in Montana during the past two years that some individual, association or governmental agency will most certainly challenge the constitutionality of this proposed law the first time an attempt is made to enforce it. We feel that the following deletions should be made from the bill so that the enforcement will be exercised against the parents or guardians of the child who refuse to comply. This can be accomplished by deleting the following portions of the bill:

Section 2 on page 2, lines 4 through 13;

Section 3 on page 2, lines 14 through 20;

Section 4, subsection 3 on page 3, line 22 through page 4, line 6 and

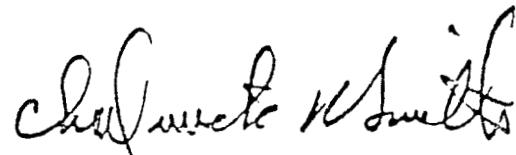
Section 8, subsection 2 on page 5, lines 16 through 22

With the above deletions, enforcement would be provided by the remaining subsections of Section 8 on page 5 and would subject offenders to the civil penalty provided in Section 9 on page 6.

The school districts do not object to assisting in the keeping of records as provided in Section 5 on page 4 and do not feel that the cost of such participation would be substantial.

Furthermore, the definition of "governing authority" in Section 1, page 1, lines 16 through 19 should be amended to indicate that the governing authority is the Board of Trustees of a public school and the administrator of a private school.

Respectfully submitted,



CHADWICK H. SMITH, on behalf of  
Montana School Boards Association  
26 W. 6th Avenue - P. O. Box 604  
Helena, Montana 59601  
Lobbyist No. 52-79

MEMORANDUM ESTABLISHING CONSTITUTIONALITY OF SB 175,  
REQUIRING IMMUNIZATION AS A CONDITION OF SCHOOL ATTENDANCE

Chad Smith, attorney for the School Board Association, has made the assertion that there is a constitutional right to an education which would render invalid any statute interfering with it. Careful research indicates that he is wrong.

First, there is no fundamental right, under the U.S. Constitution, to an education. The U.S. Supreme Court has said so, and other federal courts have followed suit. See San Antonio School District v. Rodriguez, 411 U.S. 1, 93 S.Ct. 1278, 36 L.Ed2d 16 (1973); Scott v. Board of Education of City of N.Y., 420 F.Supp. 876 (D.C.N.Y. 1976); Carroll v. Dept. of Health, Education and Welfare, 410 F.Supp. 234, 239 (D.C.Kent. 1976); Zoll v. Anker, 414 F.Supp. 1024 (D.C.N.Y. 1976).

There may, however, be a right to an education under various state constitutions, including our own. New Jersey, New York and Arizona are three such states. All have constitutional provisions similar to ours relating to education. [Cases stating that those three states have a constitutional right to education are: Zoll v. Anker, Id., (New York); Shofstall v. Hollins, 515 P.2d 590, 110 Ariz. 88 (1973) (Arizona); and Robinson v. Cahill, 339 A.2d 193, 67 N.Y. 333 (1975) (New Jersey)].

Each of the above three states, however, has enacted compulsory vaccination statutes as a condition of school attendance, similar to SB 175, and New York and New Jersey have had cases which reaffirmed the police power of the state to pass a law protecting public health, welfare, and safety, specifically, to require immunization as a condition of enrollment in school. [See Bd. of Education of Mountain Lakes v. Maas, 152 A.2d 394, 404; 56 N.J.Super. 245 (1959), affm'd per curiam, 31 N.J. 537, 158 A.2d 330, cert. denied, 363 U.S. 843 (1960); and McCartney v. Austin, 298 N.Y.S2d 26 (1969).]

The basic principle routinely being followed across the country is that constitutional rights are not absolute, but may have to give way to the extent necessary to protect the health and welfare of the general public. Crowley v. Christiansen, 137 U.S. 86, 89 (1890); Sadlock v. Bd. of Education, 58 A.2d 218, 137 N.J.L. 85 (1948). States clearly have the police power to enact compulsory vaccination laws; such has been the consistent position of the courts for decades. Jacobsen v. Massachusetts, 197 U.S. 11 (1904).

In conclusion, the weight of legal authority overwhelmingly validates statutes such as SB 175, and any school district excluding a child pursuant to its terms could be assured its actions had a firm constitutional base.