

# SENATE COMMITTEE ON EDUCATION AND CULTURAL RESOURCES

JANUARY 26, 1981

The Senate Committee on Education and Cultural Resources met Monday, January 26, 1981 in Room 402 of the Capitol Building. Senator Bob Brown, Chairman, called the meeting to order at 1:08 p.m.

## ROLL CALL

Committee members present were Senators Brown, Smith, Hammond, Blaylock, Mazurek, and Thomas. Senator Haffey arrived late, Senator McCallum was excused due to illness, and Senator Severson was absent.

Senate Bill 197 was heard by the committee.

## SENATE BILL 197

Senator Harry Berg, District 21, sponsor of the bill, stated the bill is an attempt to clean up the tenure law in two areas: first, to allow specialists the same tenure rights as other certified teachers and second, to delete the age 65 discrimination portion of the tenure law. He further explained the exclusion of specialists was added to the law in the 1979 session, but "specialist" was not defined in the codes. He said the term is generally applied to special educators, school psychologists, school nurses, and in some cases, art, music and physical education teachers due to the open interpretation. This puts them in a different classification and certification - the same as district superintendents - and thereby excludes them from the tenure law. In support of the age discrimination portion, Senator Berg presented the judgment in the trial of Mary Dolan vs School District #10, Deer Lodge (attachment #1).

## PROPOSERS

Owen Nelson, representing the Montana Education Association, stated his support of the bill. He said it is only logical to remove the age 65 provision as it has been proven to be discriminatory. It violates federal statutes, the Montana Constitution, 14th Amendment, Title 49, Chapters 1-3, Montana Codes, the Freedom from Discrimination and Code of Fair Practices Acts. By eliminating the age discrimination provision, the

potential for litigation is avoided. He stated further that the singling out of a specific segment of educators regarding tenure rights is also discriminatory. He recommended deleting the specialist provision and returning the law to the original provision of excluding only the superintendents.

There being no further proponents, the Chairman called for opponents to present their testimony.

#### OPPONENTS

Chad Smith, representing the Montana School Boards Association, stated they oppose changing both provisions in the bill. He said specialists were given certificated status and it was intended not to give them the same status as classroom teachers. He said if budgets are going to continue to go up and cuts are going to have to be made, something has to go and classroom instruction, being the core of the education system, must be protected. There must be a capability for cuts in specialized areas and this bill would allow it. He further stated it is not necessary to comply with the federal law. He said the federal law protects against "firing" on the basis of age (65). Senate Bill 197 states "tenure" ends at age 65, not employment. The intent originally was that tenure not be an absolute protection over age 65 - there would be a probationary period the same as in the first three years of teaching. This provision exists as a protection against the "brutal" termination for cause process. It is very important to have this flexibility in dealing with older teachers, he added. He noted the Dolan case is still in litigation and is going to be heard by the Supreme Court. Mr. Smith feels it will hold up as there is good reason. He urged the committee to give the bill a do not pass recommendation.

Jess Long, representing the School Administrators of Montana, stated they oppose the bill for the same reasons Mr. Smith outlined in his testimony and urged the committee not to pass the bill.

There were no further opponents.

Senator Berg closed by saying age 65 is an arbitrary figure and smacks of discrimination. It is as much as saying people over 65 are not qualified to teach while younger people are. He pointed out he had researched ten different state laws and found none with the age 65 tenure provision. He said just because it has been on the books for a long time doesn't make it right.

Senator Berg noted that during the layoffs in Great Falls no distinction was made between specialists and teachers. He said, if anything, specialists were the last to go. He pointed out if there is just cause, any teacher, specialist or not, can be laid off. He said the bill offers needed changes and urged the committee to give the bill a do pass recommendation.

There being no further proponents or opponents to the bill, the hearing was closed.

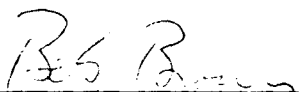
Senator Haffey joined the committee meeting.

There was further discussion by the committee members regarding Senate Bill 197.

Betti Christie, Office of Public Instruction, pointed out in answer to a question by Senator Brown, only psychologists are covered by specialist certification. Speech pathologists and audiologists are licensed by another board. Only audiologists, speech pathologists, psychologists, and school nurses can be certified as specialists by the Office of Public Instruction, but only psychologists are presently doing so.

Senator Brown stated the committee would consider taking action on Senate Bill 154 and the school bus transportation proposal at the committee meeting Wednesday, January 28.

There being no further the business, the meeting adjourned to reconvene Wednesday, January 28, 1981, at 1:00 p.m.

  
\_\_\_\_\_  
Senator Bob Brown, Chairman

jdr

# ROLL CALL

## SENATE EDUCATION COMMITTEE

47th LEGISLATIVE SESSION - - 1981

Date 1/26/81

NAME	PRESENT	ABSENT	EXCUSED
Senator Ed Smith	Y		
Senator George McCallum			<i>illness</i> X
Senator Elmer Severson		X	
Senator Svede Hammond	X		
Senator Chet Blaylock	X		
Senator Bill Thomas	X		
Senator Joseph Mazurek	X		
Senator Jack Haffey	X	<del>X</del> <i>INT.</i>	
Senator Bob Brown, Chairman	X		

Each day attach to minutes.

SENATE COMMITTEE ON EDUCATION AND CULTURAL RESOURCES

JANUARY 26, 1981

BILL SUMMARY

SENATE BILL 197     Senator Berg, Sponsor

This bill would allow school psychologists, currently the only type of "specialist" as defined by the Board of Education, the same tenure rights as other certified teaching professionals. District superintendents would remain the only exception to the tenure law.

This bill would also delete the age discrimination portion of the tenure law. Currently, at age 65, a teacher loses all tenure rights. A teacher may still be rehired, but only on a year to year basis until the school year following age 70. This section would probably not be upheld under the Montana Human Rights Act, according to personnel at the Human Rights Division.

SENATE AND CULTURAL COMMITTEE  
RESOURCES

SENATE

BILL 197

VISITORS REGISTER

DATE 1/26/81

[illegible]

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

IN AND FOR THE COUNTY OF DEER LODGE

Plaintiff,

NO. 12472

Defendants.

AND DECLARATORY JUDGMENT

## FINDINGS OF FACT

- 474  
100-4500  
BIO. MENT

1 People are too varied for a general rule such as forced  
2 retirement to be valid.

3 4. Mandatory retirement has a detrimental effect on people.  
4 They find it difficult to adjust causing depression and  
5 sometimes death.

6 5. Forced retirement results in loss of income. In 1975,  
7 15.3 percent of persons over 65 years of age were below  
8 the poverty level (Statistical Abstract of the U.S., p. 460,  
9 Table No. 745). In that year, 11.4 percent of the total  
10 U.S. population were below the poverty level (Statistical  
11 Abstract of the U.S., p. 458, Table 741).

12 6. If Mary Dolan would have been permitted to work as a princip  
13 for School District No. 10, she would have earned the  
14 following:

15 a.	For the period July 1, 1977	
16	through June 30, 1978 (Paragraph 1	
	of Stipulation)	\$ 26,511.92
17 b.	For the period July 1, 1978	
18	through June 30, 1979 (Paragraph 3	
	of Stipulation)	28,102.64
19 c.	For the period July 1, 1979	
20	through March 31, 1980 (day of trial)	
	(9 months at \$2477.75 per month -	
	Paragraph 5 of Stipulation)	22,299.75
21	TOTAL	\$ 76,914.31

22 7. During the period described in Paragraph 6, Mary Dolan  
23 earned the following amounts:

24 a.	From mid-November, 1977, through	
25	June 30, 1978 as a teacher at	
	Warm Springs State Hospital (7 1/2	
26	months at \$984.00 per month -	
	Paragraph 2.D. of Stipulation)	\$ 7,380.00
27 b.	From July 1, 1978, through	
28	March 1979 as a teacher at	
	Warm Springs State Hospital	
29	(9 months at \$984.00 per month -	
	Paragraph 4.C. of Stipulation)	\$ 8,856.00
30 c.	From April, 1979 through March 31,	
31	1980 (day of trial) as Director of	
	the Copper Village Arts Center	
32	(12 months at \$786.00 per month -	
	Paragraphs 4.D. and 6.C. of Stipulation)	\$ 9,432.00
	TOTAL	\$ 25,668.00



1 8. Mary Dolan received payments from Social Security Administra-  
2 tion, Montana Teachers Retirement System, and the Western  
3 Conference of Teamsters Pension Fund. These payments  
4 were from funds established in part by Mary Dolan's contri-  
5 butions (Social Security Administration) or totally by Mary  
6 Dolan's contributions (Montana Teachers Retirement System  
7 and Western Conference of Teamsters Pension Fund).

8 CONCLUSIONS OF LAW

- 9 1. The right to work is a fundamental right guaranteed under  
10 the 1972 Constitution of Montana, Article II, Section 3.  
11 The state may not abridge this right without a compelling  
12 state interest.
- 13 2. Applying the standard described in Paragraph 1, above there  
14 is no evidence that a compelling state interest exists for  
15 limiting the right to work as does Section 20-4-203 (2),  
16 M.C.A. 1978. That law violates Article II, Sections 3 and  
17 4, 1972 Constitution of Montana. Mary Dolan's forced retire-  
18 ment is unconstitutional.
- 19 3. The group of persons sixty-five (65) years of age and older  
20 are a suspect classification, Article II, Section 4, 1972  
21 Constitution of Montana. The State, or its political sub-  
22 divisions, may not discriminate against this group without  
23 a compelling state interest.
- 24 4. Applying the standard described in Paragraph 3 above, there  
25 is no evidence that a compelling state interest exists for  
26 discriminating against the suspect classification of people  
27 sixty-five (65) years of age and older as does Section 20-4-  
28 203 (2), M.C.A. 1978. That law violates Article II, Section  
29 4, 1972 Constitution of Montana. Mary Dolan's forced retire-  
30 ment is unconstitutional.
- 31 5. The equal protection analysis requires consideration of these  
32 factors: (1) the character of the class affected; (2) the

1 importance of the benefit denied; and (3) the state interests  
2 asserted. This analysis was proposed by Justice Marshall,  
3 dissenting, San Antonio School District v. Rodriguez, 36 L.  
4 Ed. 2d at 81.

5 6. Applying the standard described in Paragraph 5, above, the  
6 character of the class affected is persons sixty-five (65)  
7 years of age and older. A greater percentage of this group  
8 is below the poverty level than the general population. The  
9 benefit denied is public employment. No state interests were  
10 asserted or proven at trial. Section 20-4-203 (2), M.C.A.  
11 1978, violates the equal protection clause of the 1972 Consti  
12 tution of Montana, Article II, Section 4, of this standard  
13 applies. Mary Dolan's forced retirement is unconstitutional.

14 7. The equal protection clause of the 14th Amendment to the  
15 United States Constitution and Article II, Section 4, 1972  
16 Constitution of Montana, requires that statutory classificati  
17 bear a rational relationship to a legitimate state interest.  
18 8. Applying the standard described in Paragraph 7, the classific  
19 tion drawn by Section 20-4-203 (2) M.C.A. 1978, bears no  
20 rational relationship to a legitimate state interest. The  
21 classification drawn is people sixty-five (65) and older are  
22 not qualified to be principals while persons under sixty-five  
23 (65) years of age are qualified to be principals. People  
24 are so varied that this classification bears no rational  
25 relationship to the legitimate state interest of hiring  
26 qualified principals. Section 20-4-203 (2), M.C.A. 1978,  
27 violates the equal protection of the 14th Amendment to the  
28 Constitution of Montana Article II, Section 4. Mary Dolan's  
29 forced retirement is unconstitutional.

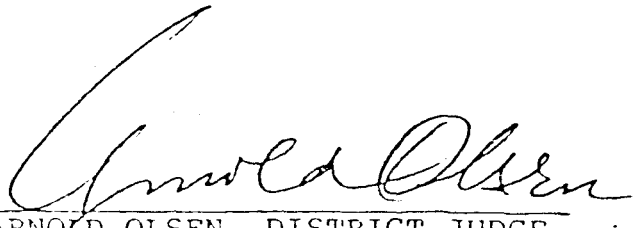
30 9. Irrebutable presumptions violate the due process clause of th  
31 14th Amendment and the 1972 Constitution of Montana when the  
32 presumption is not universally true in fact and the state

- has reasonable alternative means of making the determination.
10. Applying the standard described in Paragraph 9, retirement creates an irrebuttable presumption that people sixty-five (65) years of age and older are not qualified to be principals. That presumption is not universally true because people vary so much that no general rule is valid. The state has reasonable alternative means of determining if a person is qualified to be a principal through individual evaluation. Section 20-4-203 (2), M.C.A. 1978, violates the due process clause of the 14th Amendment to the United States Constitution and the 1972 Constitution of Montana, Article II, Section 17. Mary Dolan's forced retirement is unconstitutional for this reason.
11. Montana's Freedom from Discrimination Act, Title 49, Chapter 2, M.C.A. 1978, and Montana's Governmental Code of Fair Practices, Act, Title 49 Chapter 3, 1978, repealed Section 20-4-203 (2) M.C.A. 1978. Forcing Plaintiff Dolan to retire violates these two acts because it is illegal discrimination based upon age.
12. Mary Dolan would have earned \$76,914.31 if she were employed as a principal. She earned \$25,668.00. Her remedy is the difference between these amounts or \$51,246.32. Other amounts received by her are not subtracted from her back pay award because they are received from funds financed in total or in part by contributions from Mary Dolan's earnings.

#### DECLARATORY JUDGMENT

Section 20-4-203 (2), M.C.A., is hereby declared to violate the equal protection due process clauses of the 1972 Constitution of Montana and the United States Constitution. In addition, it was repealed by the adoption of Sections 49-2-303 (1) and 49-3-201, M.C.A. Mary Dolan's forced retirement pursuant to Section 20-4-203 (2) was unconstitutional and illegal. She is entitled to a back pay award in the amount of \$51,246.31 plus costs and 10 percent interest from the day of Judgment until she is paid.

1 DATED this 16<sup>th</sup> day of July, 1980.

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6 ARNOLD OLSEN, DISTRICT JUDGE  
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NAME: John J. Jones DATE: 1-26-71

ADDRESS: 709 1st Ave S Apt 516 NE 59445

PHONE: 452-2297

REPRESENTING WHOM? \_\_\_\_\_

APPEARING ON WHICH PROPOSAL: 90197

DO YOU: SUPPORT? ✓ AMEND? \_\_\_\_\_ OPPOSE? \_\_\_\_\_

COMMENTS: \_\_\_\_\_

~~PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY~~

NAME: Mr. Nelson DATE: 1-26-81

ADDRESS: 1232 E. 1<sup>st</sup> Ave

PHONE: 142-4250

REPRESENTING WHOM? Mont. Educ. Assoc

APPEARING ON WHICH PROPOSAL: SP 197

DO YOU: SUPPORT? ✓ AMEND? \_\_\_\_\_ OPPOSE? \_\_\_\_\_

COMMENTS: \_\_\_\_\_

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY-