

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).

PROPONENTS

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 as much as says 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.

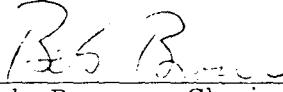
Senator Haffey joined the committee meeting.

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 1/26/21

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.

EDUCATION

SENATE AND CULTURAL RESOURCES

COMMITTEE

VISITORS REGISTER

DATE 1/26/81

SENATE

BILL 197

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

1 IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
2 OF THE STATE OF MONTANA
3 IN AND FOR THE COUNTY OF DEER LODGE

4 MARY DOLAN,

5 Plaintiff,

FILED July 16 1980
Helen Meloy, Clerk
Deputy Clerk

6 vs.

7 NO. 12472

8 SCHOOL DISTRICT NO. 10,
9 Deer Lodge County, Anaconda,
10 Montana, and each of the
11 members thereof,

12 Defendants.

13 FINDINGS OF FACT, CONCLUSIONS OF LAW
14 AND DECLARATORY JUDGMENT

15 The trial in the above case was held on March 31, 1980.
16 Plaintiff Mary Dolan was present and represented by her
17 attorney, John Albrecht, Choteau, Montana. Defendant School
18 District No. 10, Deer Lodge County, was represented by its
19 attorney, William Brolin, Anaconda, Montana. After taking
20 evidence and hearing and reading arguments of counsel, the Court
21 finds and concludes as follows:

22 FINDINGS OF FACT

23 1. Mary Dolan was the tenured principal of the W. K. Dwyer
24 Elementary School in Anaconda, Montana, operated by
25 Defendant School District No. 10, Deer Lodge County. She
26 was born on April 27, 1912.

27 2. By a letter dated March 15, 1977, School District No. 10,
28 Deer Lodge County notified Mary Dolan that her services
29 as principal at the W. K. Dwyer School were terminated
30 pursuant to Section 20-4-203 (2), M.C.A. 1978 and a policy
31 of School District No. 10, Deer Lodge County implementing
32 that law forcing all principals to retire at the age of 65.

33 3. Attaining the age of 65 years is not an accurate predictor
34 of performance of a job as principal of an elementary school.

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 principal
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 26 Warm Springs State Hospital (7 1/2 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 29 Warm Springs State Hospital (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 (12 months at \$786.00 per month - Paragraphs 4.D. and 6.C. of Stipulation)	\$ 9,432.00
32 TOTAL	\$ 25,688.00

8. Mary Dolan received payments from Social Security Administration, Montana Teachers Retirement System, and the Western Conference of Teamsters Pension Fund. These payments were from funds established in part by Mary Dolan's contributions (Social Security Administration) or totally by Mary Dolan's contributions (Montana Teachers Retirement System and Western Conference of Teamsters Pension Fund).

CONCLUSIONS OF LAW

1. The right to work is a fundamental right guaranteed under the 1972 Constitution of Montana, Article II, Section 3. The state may not abridge this right without a compelling state interest.
2. Applying the standard described in Paragraph 1, above there is no evidence that a compelling state interest exists for limiting the right to work as does Section 20-4-203 (2), M.C.A. 1978. That law violates Article II, Sections 3 and 4, 1972 Constitution of Montana. Mary Dolan's forced retirement is unconstitutional.
3. The group of persons sixty-five (65) years of age and older are a suspect classification, Article II, Section 4, 1972 Constitution of Montana. The State, or its political subdivisions, may not discriminate against this group without a compelling state interest.
4. Applying the standard described in Paragraph 3 above, there is no evidence that a compelling state interest exists for discriminating against the suspect classification of people sixty-five (65) years of age and older as does Section 20-4-203 (2), M.C.A. 1978. That law violates Article II, Section 4, 1972 Constitution of Montana. Mary Dolan's forced retirement is unconstitutional.
5. The equal protection analysis requires consideration of these 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 classifica-
17 tions bear a rational relationship to a legitimate state interest.
18 8. Applying the standard described in Paragraph 7, the classifica-
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. Irrebuttable presumptions violate the due process clause of the
31 14th Amendment and the 1972 Constitution of Montana when the
32 presumption is not universally true in fact and the state

1 has reasonable alternative means of making the determination.

2 10. Applying the standard described in Paragraph 9, retirement
3 creates an irrebuttable presumption that people sixty-five
4 (65) years of age and older are not qualified to be principals.
5 That presumption is not universally true because people vary
6 so much that no general rule is valid. The state has reason-
7 able alternative means of determining if a person is qualified
8 to be a principal through individual evaluation. Section
9 20-4-203 (2), M.C.A. 1978, violates the due process clause
10 of the 14th Amendment to the United States Constitution and
11 the 1972 Constitution of Montana, section 17. Mary
12 Dolan's forced retirement is unconstitutional for this reason.

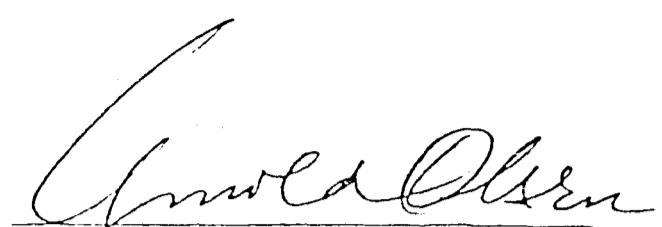
13 11. Montana's Freedom from Discrimination Act, Title 49, Chapter 2,
14 M.C.A. 1978, and Montana's Governmental Code of Fair Practices,
15 Act, Title 49 Chapter 3, 1978, repealed Section 20-4-203 (2)
16 M.C.A. 1978. Forcing Plaintiff Dolan to retire violates these
17 two acts because it is illegal discrimination based upon age.

18 12. Mary Dolan would have earned \$76,914.31 if she were employed
19 as a principal. She earned \$25,668.00. Her remedy is the
20 difference between these amounts or \$51,246.32. Other amounts
21 received by her are not subtracted from her back pay award
22 because they are received from funds financed in total or in
23 part by contributions from Mary Dolan's earnings.

24 DECLARATORY JUDGMENT

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

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DATED this 16th day of July, 1980.


ARNOLD OLSEN, DISTRICT JUDGE

NAME: John Smith DATE: 10/20/2023

ADDRESS: 719 1/2 Ave S, Seattle, WA 98101

PHONE: 452-2297

REPRESENTING WHOM? _____

APPEARING ON WHICH PROPOSAL: _____

DO YOU: SUPPORT? ✓ AMEND? _____ OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

NAME: Chris Nelson DATE: 1-26-81

ADDRESS: 1232 E. 1st Ave

PHONE: 442-4250

REPRESENTING WHOM? Mont. Educ. Assoc

APPEARING ON WHICH PROPOSAL: SB 197

DO YOU: SUPPORT? ✓ AMEND? _____ OPPOSE? _____

COMMENTS: _____

PLEASE SERVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.