

MINUTES OF THE MEETING  
EDUCATION AND CULTURAL RESOURCES COMMITTEE  
MONTANA STATE  
HOUSE OF REPRESENTATIVES

January 16, 1985

The Education and Cultural Resources Committee meeting was called to order January 16, 1985 by Chairman Dan Harrington at 3:00 p.m. in Room 312-3 of the State Capitol Building.

ROLL CALL: All members were present.

CONSIDERATION OF H.B. 144: Representative Bob Marks, from District #75, introduced H.B. #144 as the sponsor of the bill. He explained that this bill would relieve the cash flow problems to school districts in that it provides for tuition of out-of-county-high school students to be paid two times during the fiscal year to coincide with county tax collections.

PROPONENTS: Helen Williams, County School Superintendent from Boulder, came forward to speak on behalf of the Montana Association of County School Superintendents who support this bill. She relayed that the dollars paid in tuition has increased since 1975 and it presently presents a hardship to pay unappropriated high school monies when they are due. Exhibit 1 was distributed which showed the out-of-county student tuition payments for Jefferson County since the 1982-83 school year. She felt not only would it be advantageous for Jefferson County, who sends many students to Helena High, but for many small counties as well. Also see written testimony, Exhibit 2.

Bob Lawmeyer, Superintendent of Jefferson High in the Boulder Public School District relayed that Jefferson County presently has a tuition bill of about \$135,000 which should have been paid in full in December. At present they do not have any monies from the first tax collection and are being required to pay out money without having it. See Exhibit 7.

Wade Buchanan from the Montana School Board Association spoke in support of the bill.

Bill Anderson, on behalf of Ed Argenbright and the Office of Public Instruction, spoke on the logic of allowing the tuition payments to coincide with the collection of taxes. See Exhibit 3.

Jess W. Long, School Administrators of Montana, brought forth the issue of the district receiving the revenue getting it too late and possibly losing earned interest.

DISCUSSION OF H.B. 144: There being no further proponents and no opponents, the floor was opened for questions and discussion. Rep. Eudaily clarified whether there would be an advantage to having an effective date of July 1st on the bill and Rep. Marks

replied that it would be important and appropriate to do so. He also asked Helen Williams if the school could spend the money allotted from the prior year and she answered that the funds were carried over. It was reiterated by Rep. Eudaily that the school that is educating the pupils will receive one-half of the tuition in the year in which the students attend, but they would not receive the other half of the funds until the following school year.

There was some discussion whether June 1st would be a better effective date for the bill, and Rep. Peck spoke in favor of payment dates set at June 1st and December 1st.

Representative Marks made closing remarks in regard to H.B. 144.

There being no further discussion, Chairman Harrington closed the hearing on H.B. 144 and opened the floor to hearing H.B. 149.

CONSIDERATION OF H.B. 149: Representative Paul Pistoria from Great Falls District #36 addressed the Committee regarding his dissatisfaction with Sec. 20-09-204 which governs contracting services by a school district. In Exhibits 4 and 5 he showed the Committee copies of this code and a memo regarding an audit request. He explained that a concern lay especially with audits and services over \$7,500. He felt the law was unclear as to what is to be bid and what is not. The bill was introduced with the wording "or provide professional services for the district". Rep. Pistoria also offered an amendment for this bill as follows:

1. Title, line 4.  
Following: "THAT"  
Insert: "CERTAIN"
2. Page 2, line 16.  
Following: "district"  
Insert: "other than professional services of  
teachers, administrators, architects,  
or attorneys"

There being no further proponents, opponents were called for.

OPPONENTS: Wade Buchanan with the School Board Association spoke concern with the number of other professional employees hired by school districts which the amendment would not cover. These employees are specialists in counselling, speech therapy, psychology, etc. Mr. Buchanan felt that if there were a problem in contract bidding, members of the community should go before the local school board to correct the problem.

Bob Laumeyer, Superintendent in the Boulder Public School District, spoke of the fact that in the bidding process the contract does not always go to the lowest bidder, but to the one most qualified to do the best job. He also felt this bill questions and limits the judgement of the trustees.

Rick Bartos from the Office of Public Instruction stated that the bill and amendment doesn't list the professional services rendered to the school district.

Jeff Long, School Administrators of Montana, relayed that special education uses a multitude of services and the bill may limit what they can do.

DISCUSSION OF H.B. 149: Questions and answers ensued. Rep. Hannah read the code which stated that the contract must be let to the lowest responsible bidder. Rick Bartos relayed that Exhibit 6 was a legal opinion stating that licensed professional individuals are not included under 20-09-204 and are exempt. These professionals would be lawyers, accountants, and services of this nature.

Rep. Sands asked why they were not covered under this statute and Mr. Bartos explained two main principles in contract letting which are: 1) the restriction of board members giving contracts to relatives; and 2) the \$7,500 limit being applicable to Subsection 3. In regards to the statement in the code of "other work for the benefit of the district", the attorney general's interpretation was that this was for work of a tangible nature as opposed to counsel.

Representative Pistoria closed by saying that the school districts are carrying too much power and the people of Montana need protection from this sort of thing.

ACTION ON H.B. 80: Rep. Mercer moved that amendments be attached to H.B. 80 as follows:

1. Page 6, lines 24 and 25.  
Strike: subsection (5) in its entirety  
Re-number: subsequent subsections
2. Page 9, line 1.  
Strike: "."  
Insert: ";"
3. Page 9, line 7.  
Following: line 6  
Insert: "(16) adopt a seal bearing on its face the words "Montana university system", which must be affixed to all diplomas and all other papers, instruments, or documents which may require it."

The motion passed unanimously by voice vote. Rep. Williams moved that H.B. 80 DO PASS AS AMENDED, the motion was seconded by Rep. Hammond and carried unanimously.

ACTION ON H.B. 99: Rep. Hannah moved that H.B. 99 be amended as follows:

1. Title, lines 6 and 7.  
Following: "ENGINEER-IN-TRAINING;"

Strike: remainder of line 6 through "AND" on  
line 7

Following: "MCA" on line 7

Insert: "; AND PROVIDING AN IMMEDIATE EFFECTIVE  
DATE"

2. Page 1, line 17.

Following: "~~standing~~"

Insert: " , approved by the board as being of  
satisfactory standing,"

3. Page 2.

Following: line 11

Insert: "NEW SECTION. Section 3.  
Effective date. This Act is effective  
on passage and approval."

The amendment passed unanimously by voice vote. Roll call  
vote was taken on the motion that H.B. 99 DO PASS AS AMENDED  
made by Rep. Peck, with a second by Rep. Schye. The roll  
call vote showed 13 for, 5 against.

H.B. #71 will be acted upon after hearing H.B. 18.

There being no further business, adjournment was called for  
at 4:15 p.m.

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DAN HARRINGTON, Chairman

crf

DAILY ROLL CALL

EDUCATION COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date 1-16-85

NAME	PRESENT	ABSENT	EXCUSED
Dan Harrington	✓		
Ralph Eudaily	✓		
Ray Brandewie	✓		
William Glaser	✓		
Joe Hammond	✓		
Thom Hannah	✓		
Raymond Harbin	✓		
Roland Kennerly	✓		
Les Kitselman	✓		
John Mercer	✓		
John Montayne	✓		
Richard Nelson	✓		
Jerry Nisbet	✓		
Ray Peck	✓		
Jack Sands	✓		
Ted Schye	✓		
Fred Thomas	✓		
Mel Williams	✓		

EXHIBIT 4  
H.B. 149  
1-16-85

Great Falls Public Schools  
Great Falls, Montana

May 10, 1984

TO: Board of Trustees  
Great Falls Public Schools

FROM: Mr. Earl B. Lamb  
Asst. Supt. for Business

RE: Audit Request for 1983-84



The Facilities and Finance Committee recommends the contracting of the firm of Hamilton-Misfeldt and Company to do the annual school audit of the 1983-84 school year. The price will be \$12,900, the same as the past two years.

Our agreement with the firm is subject to approval of the Department of Administration in Helena.

EBL

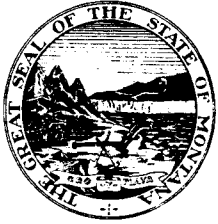
EBL:gs

*with Bid*

*204-7-204*  
*Must Bid*  
*and 7500*

*Introduces Bill as*  
*H.B. 143-1983*  
*on EV, T*  
*Paul S. Pistorio*

EXHIBIT 3  
H.B. 144  
1-16-85



OFFICE OF PUBLIC INSTRUCTION

STATE CAPITOL  
HELENA, MONTANA 59620  
(406) 449-3095

Ed Argenbright  
Superintendent

January 16, 1985

TO: Chairman, House Education Committee  
FROM: ~~Dr.~~ Bill Anderson, OPI *WRA*  
RE: H.B. 144 by Rep. Marks

Mr. Chairman,

My name is Bill Anderson and I represent the Superintendent of Public Instruction. I rise in support of this bill. Under present law the entire amount of tuition becomes due in December although only  $\frac{1}{2}$  of the property taxes have been collected. As property taxes are collected in November and in May, it would appear logical that the payment of tuition would coincide with collection of taxes. For this reason the Superintendent of Public Instruction supports this bill.

WRA:lab

WITNESS STATEMENT

Name John Williams Committee On \_\_\_\_\_  
 Address Box 1, Ludlow, Mt. Date 1/16/75  
 Representing Sh. Supt. Support X  
 Bill No. 4.F.H. Oppose \_\_\_\_\_  
 Amend \_\_\_\_\_

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. Support bill to make J.S. tuition payments in 2 payments in June to coincide with County tax collection.
2. Mt. Supt. of Sch. Supt. support the bill. County's using ANB & Co. taxes insufficient to <sup>schools</sup>
3. All unappropriated school moneys when they are due. Making 2 payments will alleviate the tax burden & keep all schools happy.
4. The number of tuition agreements in Jefferson Co. have steadily increased since 1975 as well as the individual percentage rate. This hurts the small parties.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.



County Superintendent of Schools  
Jefferson County

Helen Williams - Superintendent

P.O. Box H

Boulder, Montana 59632

January 16, 1985

Out of county high school tuition payments for Jefferson County for 1982-83, 1983-84, 1984-85.

1982-83	64 students at Helena H.S.:	\$	83,032.32
	4 students at Willow Creek H.S.:		4,136.16
	3 students at 3-Forks H.S.:		4,006.38

TOTALS:	<u>71</u>	\$	<u>91,174.86</u>
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1983-84	74 students at Helena H.S.:	\$	111,115.10
	1 student at Yellowstone Ranch:		3,100.27
	2 students at 3-Forks H.S.:		2,718.70
	3 students at Willow Creek H.S.:		5,834.46

TOTALS:	<u>80</u>	\$	<u>122,788.53</u>
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1984-85	76 students at Helena H.S.:	\$	124,372.48
	1 student at Yellowstone Ranch:		2,550.00
	2 students at 3-Forks H.S.:		5,550.00
	2 students at Willow Creek H.S.:		2,800.00

TOTALS:	<u>81</u>	\$	<u>135,272.48</u>
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# STANDING COMMITTEE REPORT

JANUARY 16 19 85

MR. SPEAKER

We, your committee on EDUCATION & CULTURAL RESOURCES

having had under consideration HOUSE BILL Bill No. 80

FIRST reading copy ( WHITE )  
color

## CLARIFICATION OF CERTAIN LAWS RELATING TO EDUCATION

Respectfully report as follows: That HOUSE Bill No. 80

### BE AMENDED AS FOLLOWS:

1. Page 6, lines 24 and 25.  
Strike: subsection (5) in its entirety  
Re-number: subsequent subsections
2. Page 9, line 1.  
Strike: "1."  
Insert: "7"
3. Page 9, line 7.  
Following: line 6  
Insert: "(16) adopt a seal bearing on its face the words "Montana university system", which must be affixed to all diplomas and all other papers, instruments, or documents which may require it."

AND, AS AMENDED,

DO PASS

# STANDING COMMITTEE REPORT

JANUARY 16

19 85

**SPEAKER**

MR. ....

We, your committee on **EDUCATION & CULTURAL RESOURCES** .....

having had under consideration **HOUSE** ..... Bill No. **99**

**FIRST** reading copy ( **WHITE** )  
color

**ENGINEERING TECHNOLOGY GRADUATE; EXAMINATION FOR ENGINEER-IN-TRAINING**

Respectfully report as follows: That **HOUSE** ..... Bill No. **99**

## BE AMENDED AS FOLLOWS:

1. Title, lines 6 and 7.  
Following: ~~"ENGINEER-IN-TRAINING;"~~  
Strike: remainder of line 6 through "AND" on line 7  
Following: "MCA" on line 7  
Insert: "; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE"
2. Page 1, line 17.  
Following: "standing,"  
Insert: ", approved by the board as being of satisfactory standing,"
3. Page 2.  
Following: line 11  
Insert: "NEW SECTION. Section 3.  
Effective date. This Act is effective on passage and approval."

AJD, AS AMENDED

DO PASS

ROLL CALL VOTE

HOUSE COMMITTEE EDUCATION

DATE 1-16-85 House Bill No. 99 Time \_\_\_\_\_

NAME	YES	NO
<del>Dan Harrington</del>		
Ralph Eudaily		✓
Ray Brandewie		✓
William Glaser	✓	
Joe Hammond	✓	
Tom Hannah	✓	
Raymond Harbin	✓	
Roland Kennerly	✓	
Les Kitselman		✓
John Mercer	✓	
John Montayne	✓	
Richard Nelson		✓
Jerry Nisbet		✓
Ray Peck	✓	
Jack Sands	✓	
Ted Schye	✓	
Fred Thomas	✓	
Mel Williams	✓	
Dan Harrington	✓	

Secretary \_\_\_\_\_

Chairman \_\_\_\_\_

Motion: DO PASS AS AMENDED; PECK MOVED, SCHYE SECOND

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

H.B. 149 1-16-85

USE FOR H.B. 149 - 1985 Session

Paul H. Pistoria 20-9-204

**Cross-References**

Appropriation for sectarian purpose prohibited, Art. V, sec. 11, Mont. Const.  
Public school fund, Art. X, sec. 5, Mont. Const.  
Postsecondary vocational-technical center fund, 20-7-325.

Adult education fund, 20-7-705.  
Transportation fund budget required, 20-10-143.  
School food services fund a nonbudgeted fund, 20-10-207.

**20-9-202. County officials for financial administration when joint district.** (1) When all of the schools of the joint district are located in one county, the school financial administration duties assigned to county officials shall be performed by those officials of the county wherein the schools of the district are located. When the schools of a joint district are located in more than one county, the superintendent of public instruction shall designate the county officials to perform such duties for the joint district.

(2) The designated county treasurer shall be the custodian of all joint district moneys and shall perform all other duties of the county treasurer for the joint district. The superintendent of public instruction shall disburse all moneys for a joint district to such county treasurer.

History: En. 75-6803 by Sec. 239, Ch. 5, L. 1971; amd. Sec. 14, Ch. 277, L. 1977; R.C.M. 1947, 75-6803.

**Cross-References**

Duties of County Treasurer, 7-6-2111.

**20-9-203. Examination of district accounting records.** (1) The accounting records of all first- and second-class school districts and third-class school districts that maintain a high school shall be audited in accordance with 2-7-503.

(2) Annually and at such other times as directed by the board of county commissioners or trustees, the county auditor or the county treasurer if there is no county auditor shall audit the accounting records of each third-class district that does not maintain a high school. Such district shall deliver all accounting records to the auditing county official no later than July 15 for the audit of the financial activity of the last completed school fiscal year. The auditing county official shall examine the accounting records, prepare an audit report, and:

- (a) return the accounting records to the district no later than August 15;
- (b) send a copy of the audit report to the chairman of the trustees; and
- (c) file copies of the audit report with the county superintendent and the county clerk and recorder.

History: En. 75-6807 by Sec. 243, Ch. 5, L. 1971; amd. Sec. 17, Ch. 266, L. 1977; R.C.M. 1947, 75-6807; amd. Sec. 2, Ch. 336, L. 1979; amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 5, Ch. 573, L. 1981.

**Compiler's Comments**

1981 Amendments: Section 7, Ch. 274, provided in part: "(1) The functions of the department of community affairs of auditing the accounts and financial transactions of political subdivisions and generally assisting political subdivisions in . . . 20-9-203 . . . are transferred to the department of administration."

Chapter 573 deleted the language "annually by the department of community affairs" following the language "shall be audited" in (1).

**Cross-References**

Duties of County Auditor, 7-6-2407 through 7-6-2412.

\* **20-9-204. Conflicts of interests, letting contracts, and calling for bids.** (1) It is unlawful for any trustee to:

(a) have any pecuniary interest, either directly or indirectly, in any contract made by him in his official capacity or by the board of trustees of which he is a member; or

(b) be employed in any capacity by the school district of which he is trustee.

(2) For the purposes of subsection (1):

(a) "pecuniary interest" does not include holding an interest of 10% or less in a corporation;

(b) "contract" does not include:

(i) merchandise sold to the highest bidder at public auctions;

(ii) investments or deposits in financial institutions which are in the business of loaning or receiving money when such investments or deposits are made on a rotating or ratable basis among financial institutions in the community or when there is only one financial institution in the community; or

\* (iii) contracts for professional services other than salaried services or for maintenance or repair services or supplies when the services or supplies are not reasonably available from other sources if the interest of any board member and a determination of such lack of availability are entered in the minutes of the board meeting at which the contract is considered.

\* (3) Whenever the estimated cost of any building, furnishing, repairing, or other work for the benefit of the district or purchasing of supplies for the district exceeds the sum of \$7,500, the work done or the purchase made shall be by contract. Each such contract must be let to the lowest responsible bidder after advertisement for bids. Such advertisement shall be published in the newspaper which will give notice to the largest number of people of the district as determined by the trustees. Such advertisement shall be made once each week for 2 consecutive weeks and the second publication shall be made not less than 5 days or more than 12 days before consideration of bids. A contract not let pursuant to this section shall be void.

(4) Whenever bidding is required, the trustees shall award the contract to the lowest responsible bidder, except that the trustees may reject any or all bids.

(5) Nothing in this section shall require the board of trustees to let a contract for any routine and regularly performed maintenance or repair project or service which can be accomplished by district staff whose regular employment with such school district is related to the routine performance of maintenance for such district.

History: En. 75-6808 by Sec. 244, Ch. 5, L. 1971; amd. Sec. 1, Ch. 42, L. 1971; amd. Sec. 1, Ch. 149, L. 1973; amd. Sec. 18, Ch. 266, L. 1977; R.C.M. 1947, 75-6808; amd. Sec. 1, Ch. 314, L. 1979; amd. Sec. 23, Ch. 392, L. 1979; amd. Sec. 1, Ch. 452, L. 1983.

#### Compiler's Comments

1983 Amendment: In (3), increased the estimated cost cutoff point from \$4,000 to \$7,500; and inserted (5).

Preference to Montana labor, 18-2-403.

School officers not to act as agents, 20-1-201.

Conflict of interest, 20-1-205.

Penalty for violation of school laws, 20-1-207.

Letting contracts for school facilities, 20-6-606.

School bus purchase — contract — bids, 20-10-110.

Transportation contract — bid letting, 20-10-125.

#### Cross-References

Code of ethics, Title 2, ch. 2, part 1.

Preference to Montana contractors, 18-1-102.

Preference to Montana materials, 18-1-112.

Security to accompany bids, 18-1-203.

**20-9-205. Prohibition on division of contracts to circumvent bid requirements.** (1) Whenever any law of this state provides a limitation

upon the amount of money that a school district can expend upon any public work or construction project without letting such public work or construction project to contract under competitive bidding procedures, a school district shall not circumvent such provision by dividing a public work or construction project or quantum of work to be performed thereunder which by its nature or character is integral to such public work or construction project, or serves to accomplish one of the basic purposes or functions thereof, into several contracts, separate work orders, or by any similar device.

(2) This section shall apply not only where the public work or construction project is divided into several projects which are constructed at approximately the same period of time but also where the public work or construction project is divided into several projects which are constructed in different time periods or over an extended period of time.

History: En. Sec. 2, Ch. 149, L. 1973; R.C.M. 1947, 75-6808.1.

**20-9-206. Entering appropriations on accounting records of county treasurer.** (1) When the county treasurer receives the final budgets of the districts from the county superintendent, he shall open a fund for each budgeted fund included on the final budget of each district by entering the amount appropriated for the fund on his accounting record.

(2) Whenever the county treasurer receives a final emergency budget for a district from the county superintendent, he shall increase the amount of the regularly adopted final budget by the amount of the emergency budgeted fund included on the final emergency budget.

History: En. 75-6809 by Sec. 245, Ch. 5, L. 1971; amd. Sec. 1, Ch. 241, L. 1973; R.C.M. 1947, 75-6809.

#### **Cross-References**

Duties of County Treasurer, 7-6-2111.

**20-9-207. Documentation of expenditures.** (1) The expenditure of district moneys, other than employee contract payments, may be authorized by the trustees when:

(a) payee-signed claims, wherein the payee attests to the accuracy of the claim and that he has not received the claimed amount, have been issued to the district; or

(b) the payee has provided the district with an invoice or other document identifying the quantity and total cost per item included on the invoice.

(2) The intention of this section is to provide sufficient documentation for each expenditure of district moneys.

History: En. Sec. 1, Ch. 366, L. 1973; R.C.M. 1947, 75-6809.1.

#### **Cross-References**

Claims and actions against political subdivisions, Title 2, ch. 9, part 3.

**20-9-208. Transfer among appropriation items of a fund.** (1) Whenever it appears to the trustees of any district that the appropriated amount of any item of a budgeted fund of the final budget or the emergency budget is in excess of the amount actually required during the school fiscal year for such appropriation item, the trustees may transfer any or all of the excess appropriation amount to any other appropriation item of the same budgeted fund.

VOLUME NO. 40

OPINION NO. 37

CONTRACTS - Competitive bidding not required for purchasing health insurance for school district employees;

SCHOOL DISTRICTS - Approval by school district employees required for purchase of health insurance;

SCHOOL DISTRICTS - Group health insurance for employees;

MONTANA CODE ANNOTATED - Sections 2-18-702(1), 18-4-123(19), 18-4-124, 20-9-204(3).

- HELD: 1. A school district is not required by section 20-9-204(3), MCA, to let bids on employer provided employee health insurance.
2. Insurance purchased by a school district is not a school supply for purposes of section 20-9-204(3), MCA.

8 March 1984

Harold F. Hanser, Esq.  
Yellowstone County Attorney  
Yellowstone County Courthouse  
Billings, Montana 59101

Dear Mr. Hanser:

You have requested my opinion on the following questions:

1. Is a school district required under section 20-9-204(3), MCA, to let bids on employer provided employee health insurance plans?
2. Is insurance purchased by a school district a school supply for purposes of section 20-9-204(3), MCA?

Section 20-9-204(3), MCA, provides:

Whenever the estimated cost of any building, furnishing, repairing, or other work for the benefit of the district or purchasing of supplies for the district exceeds the sum of \$7,500, the work done or the purchase made shall be by contract. Each such contract must be let to the lowest responsible bidder after advertisement for bids. Such advertisement



shall be published in the newspaper which will give notice to the largest number of people of the district as determined by the trustees. Such advertisement shall be made once each week for 2 consecutive weeks and the second publication shall be made not less than 5 days or more than 12 days before consideration of bids. A contract not let pursuant to this section shall be void. [Emphasis added.]

The Legislature did not provide a definition for the term "supplies" in this statute, nor did it specifically include employee health insurance in the enumerated items that must be acquired through competitive bidding. The rules of statutory construction and existing case law lead me to conclude that employee health insurance plans are not "supplies" within the meaning of section 20-9-204(3), MCA, and the school district is not required to obtain the insurance through competitive bidding.

When the language of a statute is clear and unambiguous, no further construction may be employed to determine its meaning. State v. Weese, 37 St. Rptr. 1620, 616 P.2d 371 (1980). The term "supplies" is broad and unspecific. Thus, it is appropriate to apply rules of statutory construction.

Section 20-9-204(3), MCA, which was first enacted in 1971, has never been judicially interpreted with respect to the scope of the term "supplies." This statute's predecessors required competitive bidding for "any contract for building, furnishing, repairing, or other work for the benefit of the district," but did not require such bidding for "purchasing of supplies." See § 1016, R.C.M. 1935; 1913 Mont. Laws, ch. 76, § 509. In 1933 the Montana Supreme Court had occasion to interpret the scope of the term "supplies" within the context of a general state procurement statute. In Miller Insurance Agency v. Porter, 93 Mont. 567, 20 P.2d 643 (1933), the Court ruled that section 256, R.C.M. 1921, which required competitive bidding for a variety of things including "supplies," did not govern the purchase of fire insurance policies. The Court's interpretation was based on the ambiguity existing in the term "supplies," and the practical application of the statute. It also considered the fact that for years the state board of examiners had interpreted the statute to exclude fire insurance and had been obtaining fire insurance without competitive bidding; the Court noted the sanction of the Legislature to such interpretation by reason of its inaction. Id. at 646.

The statute presently in question is similar to the one addressed in Miller Insurance Agency, *supra*, since it concerns purchasing items through competitive bidding, and presents an ambiguity with the term "supplies." Applying the reasoning of the Court in Miller Insurance Agency, I reach a similar conclusion with section 20-9-204(3), MCA. The rules of statutory construction require that statutes pertaining to the same subject be read together to give effect to them all whenever possible. State ex rel. Dick Irvin, Inc. v. Anderson, 164 Mont. 513, 525 P.2d 564 (1974). The compulsory bidding provisions in this statute must therefore be considered with the statutes pertaining to health

insurance for school district employees. Section 2-18-702, MCA, states in pertinent part:

(1) All...school districts...shall upon approval by two-thirds vote of their respective officers and employees enter into group hospitalization, medical, health... contracts or plans for the benefit of their...employees and their dependents.  
[Emphasis added.]

This statute requires a procedure not contemplated or provided for in the competitive bidding procedure, which requires that "the trustees shall award the contract to the lowest responsible bidder, except that the trustees may reject any or all bids." (Emphasis added.) § 20-9-204(4), MCA. No allowance exists for the employees to approve or reject the bids. This statutory conflict evidences legislative intent that purchase of health insurance not be governed by the competitive bidding requirements.

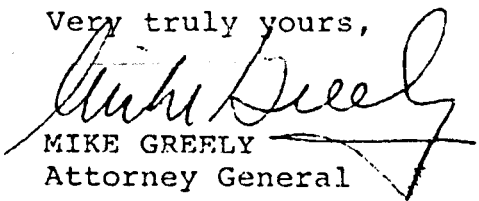
The required approval of a health insurance plan by the school district employees is a primary reason that the majority of school districts in Montana have interpreted section 20-9-204(3), MCA, not to include employee health insurance plans. The inconsistencies of these two statutes render compliance with both statutes impractical if not impossible. Furthermore, the interpretation given by the school districts must be given great deference, especially in light of legislative inaction to specifically include health insurance in the competitive bidding statute. Miller Insurance Agency, supra; Assiniboine and Sioux Tribes v. Nordwick, 378 F.2d 426 (9th Cir.), cert. denied, 389 U.S. 1046 (1967).

I conclude that section 20-9-204(3), MCA, does not require competitive bidding for the purchase of employee health insurance plans. In the absence of a statutory requirement to do so, the school district is not required to purchase the health insurance plans through competitive bidding. Missoula County Free High School v. Smith, 91 Mont. 419, 8 P.2d 800, 802 (1932).

THEREFORE, IT IS MY OPINION:

1. A school district is not required by section 20-9-204(3), MCA, to let bids on employer provided employee health plans.
2. Insurance purchased by a school district is not a school supply for purposes of section 20-9-204(3), MCA.

Very truly yours,

  
MIKE GREEFLY  
Attorney General

MG/DMcC/bw

WITNESS STATEMENT

Name Robert S. Laumeyer Committee On Educ.  
Address Boulder Mt. Date Jan. 16, 1985  
Representing Boulder Cnty. Sch. Support X  
Bill No. 144 Oppose \_\_\_\_\_  
Amend June 1 payment

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. *July 1 effective*  
Jefferson Co. Presently collects about
2. \$85,000 on its first 1/2 county 17 mill
3. H.S. levy. This year Jefferson Co. has a tuition bill of about \$135,000. Present law says payment must be made in
4. full in Dec. H.B. 144 would allow the paying county to pay at least 1/2 in Dec. and balance by June 1.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

Presently counties are being required to pay out money that has not yet been collected.

*R. S. Laumeyer*



