

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

March 11, 1985

The meeting of the Education and Cultural Resources Committee was called to order by Chairman Dan Harrington on March 11, 1985, at 3:20 p.m. in Room 312-3 of the State Capitol.

ROLL CALL: All members were present although Representatives Hannah and Thomas arrived later than roll call.

The Committee resumed discussion of Senate Bill 106 and its proposal for Subchapter "S" Corporations to have tuition reductions for students attending schools from outside their home districts. Mr. Rick Bartos from the Office of Public Instruction spoke to the Committee explaining that the Senate Taxation Committee had this bill and wished to put it into effect in its limited form to see how it worked over the next two years. The members of the Subchapter "S" Corporations approached the O.P.I. to have the bill drafted. The question posed by Rep. Glaser was whether the bill was intended only for Subchapter "S" Corporations or if the limitations should be lifted to include closely held or family corporations.

The Senate having adjourned, Senate members arrived to present bills for hearing.

CONSIDERATION OF S.B. 117: Senator Matt Himsl, Senate District #3, sponsored this bill which is an act to clarify vocational-technical center funds for the purposes of the state budgeting and accounting system. It requires the centers to use the accounting structure recommended by the National Association of College and University Business Offices. The vo-techs presently use this system, but the bill amends the language of the fund structure so where the word "university" is used, the language would be "higher education". This would make clear that it includes vo-tech. The bill has been reviewed by auditors, the Office of Public Instruction, the Vo-Tech Director, and Fiscal Analyst and simply legalizes what is being done.

PROPOSERS: Kathy Fabiano, Administrator in the Accounting Division of the Department of Administration, rose in support of this legislation which clarifies the fund structure used by vo-techs. It clarifies the requirements of interest payments on loans, and statutory limitations of negative cash balances. The bill does not change the accounting system as it is.

There being no further proponents, opponents, or questions from the Committee, Senator Himsl closed the hearing on the

EDUCATION AND CULTURAL RESOURCES COMMITTEE

March 11, 1985

Page 2

bill by saying that the bill was simply a corrective one and asked concurrence.

CONSIDERATION OF S.B. 167: Senator Pat Regan, District #47, said the heart of the bill lies in lines 16 through 19 and it allows the school district to charge a reasonable fee for any course or activity that is not part of the requirements for graduation or for any activity that is held outside the regular classroom or normal school time functions. The reason for the bill is to put in law what the Supreme Court has already ruled on and the language on lines 16 through 19 are taken from that ruling. It allows the districts flexibility in determining educational goals and academic requirements and permits them to charge for enrichment courses, summer school, extra-curricular activities after school and some courses given during school hours that are not part of the regular academic program. She said the children who could not afford these fees would be taken care of by special provisions. The fees would be put in to a fund for support of the activity or course from which the funds were derived.

PROPOSERS: Chip Erdmann with the Montana School Board Association said the bill was suggested by the Billings School District at last year's convention and the Association members voted support. He read the Supreme Court ruling as to what the test should be of whether a district may charge for a course or activity. A child should not have to pay for courses required for graduation but districts should have the ability to offer extra courses, such as after school language courses, on a fee basis. If this bill is in the school statutes, the district can find the answers and clear up confusion on the issue.

Rick Bartos with the Office of Public Instruction said his office supported this bill in the Senate Education Committee. He presented the committee with Exhibits 1 and 2 which are two attorney general opinions and reflects the language that Sen. Regan is attempting to incorporate into the bill.

Larry Holmquist, School Administrators of Montana, rose in support of the bill.

There being no opponents to the bill, Chairman Harrington called for questions from the committee.

Rep. Sands referred to the Senate amendment regarding collected fees and the fund they would be used in and asked what would happen to the funds if the special activity terminated. Sen. Regan replied that the funds would not be used to underwrite basic education and would be put into a non-budgeted account. They may be used for any course or activity outside the mandated curriculum, if the districts choose they could be put into the athletic program.

EDUCATION AND CULTURAL RESOURCES COMMITTEE

March 11, 1985

Page 3

Representative Harbin commented that he agreed with Rep. Sands in that the wording indicated that the funds would have to be used only for the activity from which they were generated. Sen. Regan replied that the term "fund" refers to a non-budgeted fund, and are kept separate from the foundation funding. That non-budgeted fund could be expended on any activity outside the normal curriculum.

Rep. Eudaily asked Chip Erdmann how the athletic program could fit in the wording of lines 16 through 19. Mr. Erdmann answered that it did fit in and school districts could charge a fee, but it was specifically for extra school courses held after hours. Sen. Regan said any mandated physical education courses may not be charged for, but any intermural activity after school may be. Rep. Mercer pointed out that the bill should perhaps include the attorney general's opinion and wording of not charging for any courses required for graduation.

Rep. Brandewie addressed Mr. Erdmann with the fact that the district may determine that courses such as typing, shorthand, or vocational education courses lie outside of their academic goals and charge students for them. Mr. Erdmann said he did not believe they could do that as the local school boards are run by the public, and pressure to not do that would be too great.

Rep. Harrington voiced a concern that driver's education held during the school year may be affected.

Rep. Peck referred to the word "functions" and said it bothered him. Mr. Erdmann said it was included as part of the Supreme Court decision language. Rep. Peck said the current law does provide for actual costs and excess supplies.

Sen. Regan said she felt a danger in amending the bill so that districts may not charge for any course taken for credit as students making up failed courses during summer school should pay for them. She closed the hearing by thanking the Committee for their time.

CONSIDERATION OF S.B. 175: Senator Chet Blaylock, District #43, opened the hearing on this bill by reminding the Committee that he sponsored a school consolidation bill two years ago. This bill reflects a better way of encouraging consolidation by paying high schools \$300 per student (third class) and \$500 (first class) for those who choose to do so. He spoke of difficulty in Montana for the businesses and farmers and the small school districts will have to start talking of consolidation. This bill may give them an incentive to do so.

PROPONENTS: Chip Erdmann, Montana School Board Association, spoke in favor of the bill since it is not mandatory. Consolidation of small school districts is really a complex

EDUCATION AND CULTURAL RESOURCES COMMITTEE

March 11, 1985

Page 4

situation and there are too many issues to consider to make it mandatory. He agrees with Sen. Blaylock that the small districts should look at it and this bill may encourage them to start serious discussions and negotiations on the subject and ultimately the bill would save the districts and state money.

Phil Campbell with the Montana Education Association said the bill contained a good concept and adds incentive.

Bill Anderson, representing the Superintendent in the Office of Public Instruction, felt this bill was a more palatable way of going about consolidation and agreed with it.

There being no opponents, Chairman Harrington called for questions from the committee.

A discussion ensued prompted by a question from Rep. Williams in regard to the student enrollment of a third class school. Andi Merrill, Legislative Researcher, answered that the classification reflects the area population and third class areas are 1,000 in number. Rep. Brandewie wondered if there should be a fiscal note with the bill to which Sen. Blaylock replied that perhaps he should have requested one. Sen. Blaylock clarified for Rep. Eudaily that if a third class district consolidated with a first class district, the \$500 per student payment would be given to the district with the smaller enrollment.

Sen Blaylock closed the hearing on this bill.

EXECUTIVE ACTION:

ACTION ON S.B. 175: Rep. Hammond moved that S.B. 175 BE CONCURRED IN. The motion was seconded by Rep. Harbin and carried unanimously by voice vote. Chairman Harrington appointed Rep. Montayne to carry the bill on the floor of the House.

ACTION ON S.B. 117: Rep. Hammond moved that S.B. 117 BE CONCURRED IN. The motion had a second by Rep. Mercer and carried by unanimous voice vote.

ACTION ON S.B. 106: Rep. Glaser explained that most family farms in Montana are not Subchapter "S" in nature and will be excluded from this bill. He relayed that most are inheritance corporations with voting and non-voting stock which excludes them from this classification. Also excluded are those farms with rental income of over \$3,000. Rep. Glaser suggested that perhaps just the term "corporation" be used in the bill. He also pointed out that a credit is given for those paying property taxes in both districts on tuition charges for sending children to one or the other.

Rick Bartos with the Office of Public Instruction addressed the committee and relayed that he helped the people from Eastern Montana who are Subchapter "S" corporations and Sen. Shaw in drafting this bill.

Rep. Glaser said there are so many more corporations in the state besides these and the committee should take a close look in approving this in the public interest.

Rep. Mercer moved that S.B. 106 be TABLED. Rep. Brandewie seconded the motion and a voice vote indicated all were in favor with the exceptions of Rep. Sands and Nisbet.

ACTION ON S.B. 167: Representative Eudaily moved that S.B. 167 BE CONCURRED IN. Rep. Montayne seconded the motion and discussion of the bill commenced.

Rep. Peck felt the bill was worded too loosely in the event it was challenged and, according to subparagraph 2, page 1, funds cannot be expended except for the activity from which the funds derived.

Rep. Eudaily proposed an amendment on Line 22, after 20-9-210, a "." be inserted and lines 22, 23, & 24 be stricken. A voice vote on this amendment showed all in favor with the exception of Rep. Brandewie. Rep. Brandewie voiced his opposition to the bill as it could evolve into a large expense for parents, and districts are given a free hand to decide which courses meet their academic goals.

Rep. Harrington cited the example of schools offering a computer program in summer which ought to be charged for, but he did not feel schools would charge for foreign languages taken during the regular school day.

Rep. Sands felt that the committee could not possibly have the time to study all the ramifications of this bill. Rep. Mercer agreed with that and added that the bill is a very general statement for codification and it would be irresponsible to pass it in its present form. He also said that unless a sub-committee were formed to study the issues, it may need to be held until the next legislative session. Rep. Harrington said he would have trouble agreeing that a sub-committee be formed at this time.

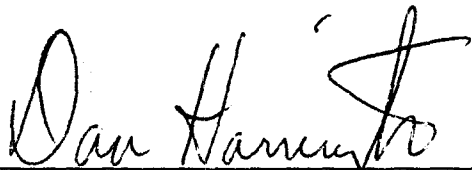
Rep. Hannah said he did not want to lose this bill as the concept is good. Rep. Eudaily motioned that action on the bill be deferred until another time. He said the School Board Association and O.P.I. have heard the concerns of the committee and suggested that they come up with helpful language to alleviate those concerns. Rep. Hammond seconded the motion and it carried.

EDUCATION AND CULTURAL RESOURCES COMMITTEE

March 11, 1985

Page 6

There being no further business, the meeting adjourned at
4:30 p.m.



DAN HARRINGTON, Chairman

crf

DAILY ROLL CALL

EDUCATION COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date 3-11-85

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	✓		

STANDING COMMITTEE REPORT

MARCH 11 19 85

MR. SPEAKER

We, your committee on EDUCATION AND CULTURAL RESOURCES

having had under consideration SENATE Bill No. 117

THIRD reading copy (BLUE)
color

CLARIFYING TREATMENT OF VO-TECH FUNDS FOR PURPOSES OF SBAS

Respectfully report as follows: That SENATE Bill No. 117

BE CONCURRED IN

XXXXXX

STANDING COMMITTEE REPORT

MARCH 11 19 35

MR. SPEAKER

We, your committee on EDUCATION AND CULTURAL RESOURCES

having had under consideration SENATE Bill No. 175

THIRD reading copy (BLUE)
color

INCREASE THE BONUS PAYMENT PER PUPIL FOR SCHOOLS THAT CONSOLIDATE

Respectfully report as follows: That SENATE Bill No. 175

BE CONCURRED IN

XXXXXX
DO PASS

*The Big Sky Country***MONTANA STATE SENATE**

SENATOR MATT HIMSL
DISTRICT NO. 9, FLATHEAD COUNTY
305 4TH AVE. E.
KALISPELL, MONTANA 59901

Senate Bill 117

Dept. of Adm

Himsl

Section 17-2-102 defines the fund structures for the university system and the Dept of Administration has determined that the Vo-Tech Centers be recorded in that fund structure using the Statewide Budget and Accounting System---as recommended by the National Association of College and University Business Officers.

Vo-Techs now use this system. This bill would amend the language of the fund structures so that where the word "university" is used the language would be "higher education".

The current loan (Section 17-2-107(5)) requires: a "loan from the general fund or the university current unrestricted sub-fund to (~~restrain~~ ^{credit} other funds) shall bear interest" since the word university is used it is not clear it includes Vo-Techs. By using "higher education" instead of university, the issue is made clear.

Where student loans, endowment funds, plant funds, agency funds and the like are designated as "university" funds, the language would carry the clear declaration to include "post secondary vocational technical centers."

These proposed clarifications do not change present accounting practices of changes the financial practices but specifically authorizes and legalizes what is being done now.

This bill has been reviewed by auditors, the Office of Public Instruction, Vo-Tech Directors, and the Fiscal Analysts and I know of no objections so I respectfully urge your favorable consideration.

Matt Himsl

SCHOOLS AND SCHOOL DISTRICTS - Fees and charges to students, validity of Article XI, section 1, Montana Constitution.

- HELD:** 1. A school district may not levy fees or charges for any course or activity for which credit may be applied toward graduation. However, if a course or activity is not within the academic or educational goals of a school district or is not offered by the school district during the regular academic year as a part of the normal school function, reasonable fees or charges may be imposed.
2. The decision of the Montana Supreme Court in *Granger, et al. v. Cascade County School District No. 1*, 29 St. Rptr. 569, Mont. , P.2d , is to be effective during the 1972-73 school year.

September 11, 1972

Mrs. Dolores Colburg
Superintendent of Public Instruction
State Capitol
Helena, Montana 59601

Dear Mrs. Colburg:

I have received your letter dated August 24, 1972, requesting my opinion on the following questions regarding the recent decision of the Montana Supreme Court in *Granger, et al. v. Cascade County School District No. 1*, 29 St. Rptr. 569, Mont. , P.2d :

1. For what types of activities or courses offered by a school can fees be legally assessed of students to participate in those activities or enroll in such courses?
2. Is the court's decision to be effective during the current school year?

Granger was brought by several parents of school children seeking a declaratory judgment and injunction against certain school fees and charges. The district court held that fees and charges made of students in **required** courses were in violation of Article XI, section 1 of the Montana Constitution. The parents appealed to the extent that relief was not granted them in district court.

On appeal the issue before the court was: "Whether defendant school district can lawfully impose, directly or indirectly, fees or charges of any kind in respect to courses and activities within its

control?" After stating the facts of the case and setting forth a detailed list of the fees imposed, the court proceeded to its decision, noting that it found it necessary to decide the case on the basis of Montana constitutional requirements.

The constitutional requirement cited by the court is Article XI, section 1, Montana Constitution, which reads as follows:

"It shall be the duty of the legislative assembly of Montana to establish and maintain a general, uniform and thorough system of public, free, common schools."

In discussing what is meant by a "thorough system of public, free, common schools", the court noted that it found the recent California case, *Serrano v. Priest*, 96 Cal. Rptr. 601, 487 P.2d 1241, persuasive. The Montana Supreme Court said, after quoting from *Serrano*:

"This language in *Serrano* goes to the crux of the problem in the instant case. Any definition of a 'thorough system of public, free, common schools' must take into consideration the wide diversity of spending throughout Montana's school districts. Certain course and activity opportunities in Cascade County School District No. 1 are not available in other Montana districts. As long as the individual student is not deprived of equal access to educational courses and activities reasonably related to recognized academic and educational goals of the particular school system, the constitutional mandate is not violated." *Granger*, supra, at 577.

The court went on to note that constitutional requirements concerning free public schools have been construed by recent decisions in Idaho and Michigan. The court then said:

"In conformity with these holdings, the district court has construed our constitutional provision to mean that mandatory school courses and activities must be furnished free of charge as part of the constitutional requirement of a free, public education. Conversely, the district court held that school courses and projects which are optional or activities that are optional or extracurricular are not covered by the constitutional requirement and that fees and charges may be assessed for these. Thus the district court set up what may be termed a 'required course or activity' test.

"While we consider that the district court was on the right track in its approach, its choice of language in its findings of fact and conclusions of law is not correct. The fundamental difficulty with the district court's language lies in the use of the phrase 'courses or projects that are required by the defendant

School District' for which fees may not be charged, on the one hand, and courses and projects which are not required or for activities which are optional or extracurricular for which fees may be charged on the other hand. Just what is meant by a 'required course or activity' as distinguished from an 'optional or extracurricular course or activity'?

"For example, at the high school level certain specific courses are required for graduation and no difficulty is presented in finding that these fall in the 'required course' category. But what about the large number of courses offered, no one of which is specifically required for graduation, but from which the student must amass a given number of credits in order to satisfy the total educational requirement for graduation? Courses falling in this category are required in the sense that a given number must be taken in order to satisfy the total educational requirements for graduation, but they are optional in the sense that the student may elect which specific courses to take in order to satisfy such total education requirements.

"We believe that the controlling principle or test should be stated in this manner: Is a given course or activity reasonably related to a recognized academic and educational goal of the particular school system? If it is, it constitutes part of the free, public school system commanded by Art. XI, § 1, of the Montana Constitution and additional fees or charges cannot be levied, directly or indirectly, against the student or his parents. If it is not, reasonable fees or charges may be imposed.

"In this manner a degree of flexibility is insured. The school district may thus define its own academic and educational goals and the courses and activities that will carry credit toward graduation within the limits provided by law. At the same time, the individual student has a freedom of choice, within the limits of the educational framework so established, to pursue a course of study directed toward business, a trade, college preparatory, commercial, secretarial, or some other goal without regard to his financial ability to pay additional fees or charges." *Granger*, *supra*, pp. 577, 578.

The Montana Supreme court thus rejects the district court's "required course or activity test" which was based, at least in part, on the Idaho case of *Paulson v. Minidoka County School District No. 331*, 463 P.2d 935, and the Michigan case of *Bond v. Public Schools of Ann Arbor*, 178 N.W.2d 484. In its stead it substitutes its own test: "Is a given course or activity reasonably related to a recognized academic and educational goal of the particular school system?"

The test supplied by the court in **Granger** must be read as a part of the entire decision to ascertain meaningful guidelines upon which administrative action can be based. The court wisely recognizes that every fee that can be or is being charged cannot be dealt with in the decision. In the final paragraph of **Granger** the court states:

“While we do not disturb the specific findings of the district court, we do by this opinion modify the language as heretofore set forth. We recognize that the findings are not specific as to each fee discussed in answers to interrogatories, but hold that the specifics are better left to administrative determination under the guidelines set forth. Accordingly, we affirm the judgment as modified herein.” **Granger**, *supra*, at 579.

The administrative action referred to by the court will rest largely with the office of the superintendent of public instruction and the various school districts of the state. The court specifically recognizes that in this manner, a degree of flexibility will be insured.

The guidelines set forth by the court in modifying the lower courts' determination appear to encompass a prohibition against any fees or charges in courses or activities which carry credit toward graduation, whether they are required or elective. The fact that a course or activity carries credit toward graduation indicates that a school district has thus defined its own academic and educational goals and the course or activity is to be free of fees and charges. If it is not within the “academic and educational goals test,” reasonable fees and charges may be imposed. For example, interscholastic athletic contests for which no credit can be earned by those participating therein and for which reasonable charges are assessed only for those wishing to attend, would appear to be lawful under the guidelines of the **Granger** decision.

The court specifies that its test applies “only to courses and activities offered by the school district during the regular academic year as a part of normal school functions.” It states further:

“It has no application to supplementary instruction offered by the school district on a private basis during the summer recess or at special times. The latter are both historically and logically not included in the free public school system required by our Constitution. Accordingly, reasonable fees and charges may be imposed therefor.” **Granger**, *supra*, pp. 578, 579.

Thus, a course or activity which is not a part of the normal school function offered during the regular academic year may have a reasonable fee or charge imposed upon it. An example of this might be music courses, which are conducted by some schools during the summer months, for no credit.

OPINIONS OF THE ATTORNEY GENERAL

In construing the provisions relating to the disposition of state land, the Montana Supreme Court stated in **State ex rel. Warner v. District Court**, 142 Mont. 145, 153, 382 P.2d 824 (1963) that a sale of state land "...must be held strictly in accordance with the prevailing law as interpreted herein."

Disposition of the land in question is not only subject to the requirements of the 1972 Montana Constitution and Chapter 9, Title 81, *supra*, it is also subject to the provisions of the Enabling Act which contains the full market value requirement. The Montana Supreme Court has specifically stated that the state cannot change the terms of the Enabling Act.

The Supreme Court in **State ex rel. Galen v. District Court et al.**, 42 Mont. 105, 112 P. 706 (1910) construed the Enabling Act and section 11 in particular. The court stated:

Neither can we agree that there is any question of the right of the United States to dictate and restrict the manner in which the state shall dispose of the lands... Neither is there any authority in the state to change the terms of the grant without the consent of the Congress of the United States. The framers of the state Constitution did not attempt to do so. They expressly agreed, for the state, not to dispose of any lands granted by the United States in any case in which the manner of disposition was prescribed in the grant, except in the manner prescribed, without the consent of the United States.... The Congress is presumed to have had good and sufficient reason for thus restricting the right of alienation, and the state solemnly accepted the conditions. 42 Mont. at 116.

The **Galen** case makes it clear that Congress had the right to restrict the manner in which the state disposed of the lands obtained under the Enabling Act. Further the state agreed to the conditions of the grant and cannot change the terms without the consent of Congress.

THEREFORE, IT IS MY OPINION:

The state of Montana must adhere to the full market value requirement of the Enabling Act in disposing of the territorial prison site at Deer Lodge, absent a congressional waiver.

Very truly yours,

ROBERT L. WOODAHL
Attorney General

VOLUME NO. 36

Opinion No. 79

SCHOOLS AND SCHOOL DISTRICTS — Student deposit fees, validity of: Article X, Section 1(3), 1972 Montana Constitution

HELD: A school district may not charge deposit fees for any course or activity for which credit may be applied toward graduation.

Your second question seeks to place an effective date on the court's decision as it applies to all schools in the state. The Montana Supreme Court decided **Granger** on July 20, 1972. As the highest state court in Montana its decisions are law and will be followed by the district courts of this state.

The decision of the supreme court in **Granger** affirmed and modified a judgment entered by the district court and is particularly applicable to Cascade County School District No. 1; however, the decision is applicable to all school districts in Montana. Since the court did not deem it necessary to delay the application of its decision it must be considered the paramount expression of the law at this time and must be followed. Thus, the decision is effective for the 1972-73 school year.

THEREFORE, IT IS MY OPINION that:

1. Pursuant to the decision of the Montana Supreme Court in **Granger, et al. v. Cascade County School District No. 1**, 29 St. Rptr. 569, Mont. , P.2d , a school district may not levy fees or charges for any course or activity for which credit may be applied toward graduation, and that a school district may define its academic and educational goals by determining which courses and activities will carry credit toward graduation within the limits provided by law. If a course or activity is not within the academic or educational goals of a school district or is not offered by the school district for credit toward graduation as a part of the normal school function, reasonable fees or charges may be imposed.
2. The decision of the Montana Supreme Court is to be effective during the 1972-73 school year.

Very truly yours,

ROBERT L. WOODAHL
Attorney General

VOLUME NO. 34

Opinion No. 53

BUILDING AND LOAN ASSOCIATIONS - Merger of; BUILDING AND LOAN ASSOCIATIONS - Branch offices, creation of. Sections 7-113 and 7-131, R.C.M. 1947.

HELD: 1. A proposed merger between building and loan associations may not be acted upon by the state superintendent of

May 12, 1976

Mrs. Dolores Colburg
Superintendent of Public Instruction
Capitol Building
Helena, Montana 59601

Dear Mrs. Colburg:

This is in response to your request for my opinion concerning the validity of school deposit fees.

In Volume 34 Opinions of the Attorney General, Opinion No. 52 (1972), I held that on the basis of Article XI, Section 1 of the 1889 Montana Constitution and **Granger v. Cascade County School District No. 1**, 159 Mont. 516, 499 P.2d 780 (1972), a school district may not levy fees or charges for any course or activity for which credit may be applied toward graduation. However, a school district may levy such fees or charges for courses or activities not within its educational goals or offered as part of the normal school function (e.g., no-credit courses).

Apparently your office has received several inquiries regarding the effect of that opinion and the **Granger** decision on deposit (refundable) fees.

Granger expressly considered eight kinds of fees and charges, but deposit fees were not among them. See **Granger**, 159 Mont. at 523. Nevertheless, the court's treatment of a collateral matter fairly implies their disapproval of deposit fees. A defense interposed by the school district was that it waived the disputed fees and charges for persons suffering economic hardship. The court declared:

We observe that the defense of waiver has nothing to do with the constitutional issue. **Constitutional requirements are a matter of right and cannot be satisfied by their denial in the first instance and subsequent waiver of the effects of such denial.** The waiver system may well furnish a financial answer, but clearly is not legally justifiable. 159 Mont. at 528-529.

I am unable to perceive any meaningful distinction between such "waiver" and the refunding of "deposit" fees. In either situation, the issue is simply whether a school district is constitutionally empowered to collect these fees at all. The court clearly has resolved that issue in the negative.

It has been suggested that perhaps our new constitution casts a different light on this subject. **Granger** is predicated upon Article XI, Section 1 of the 1889 Montana Constitution, which stated:

It shall be the duty of the legislative assembly of Montana to establish and maintain a general, uniform and thorough system of public, **free**, common schools. (Emphasis added)

The corresponding provision of the 1972 Montana Constitution is Article X, Section 1(3), which states:

The legislature shall provide a basic system of **free** quality public elementary and secondary schools... (Emphasis added)

Quite plainly these provisions are not identically phrased. However, examination of the 1972 constitutional convention transcript indicates that at least as far as the word "free" is concerned, no substantive change between the former and present provisions was contemplated:

There are possibly some other words here that need explanation, the word free. By the word free in subsection 1([3]), it is understood by the committee to mean that **those aspects of the elementary and secondary education which are essential to courses required for graduation, shall be free to the student.** Remarks by Delegate Harbaugh, Volume VIII Transcript of Proceedings, 1972 Montana Constitutional Convention, pp. 5991-5992. (Emphasis added)

Considering this comment antedated **Granger**, it bears a prophetic resemblance to the sentiments of the court. Thus, if the legality of the fees in issue in **Granger** were relitigated under the new constitution, along with the deposit fee question, in all likelihood such fees would still be condemned.

I thus conclude that both **Granger** and Opinion No. 52, above, prohibit imposition of all deposit fees by a school district for any course or activity counting as credit toward graduation, and that such prohibition is consonant with Article X, Section 1(3) of the 1972 Montana Constitution. For this reason, it has been unnecessary to treat separately the three specific questions set forth in your letter.

THEREFORE, IT IS MY OPINION:

A school district may not charge deposit fees for any course or activity for which credit may be applied toward graduation.

Very truly yours,

ROBERT L. Woodahl

VOLUME NO. 36

Opinion No. 80

ELECTIONS — Ballots, precinct committeemen; ELECTIONS — Candidates, dual candidacy; Article V, Section 9, 1972 Montana Constitution; Sections 23-3308, 23-3401, 23-3509 Revised Codes of Montana 1947

HELD: A candidate for state representative may also be placed on the ballot as a candidate for precinct committeeman.

May 13, 1976

Mr. William J. Krutzfeldt
Deputy County Attorney
County of Custer
1200 Pleasant
Miles City, MT 59301

VISITOR'S REGISTER

SENATE	HOUSE	EDUCATION	COMMITTEE
BILL	167 - ALLOW SCHOOLS TO CHARGE FEES FOR NONACADEMIC SCHOOL ACTIVITIES		DATE MARCH 11, 1985
SPONSOR	PAT REGAN		

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITOR'S REGISTER

SENATE	HOUSE	EDUCATION	COMMITTEE
BILL	117 -	CLARIFYING TREATMENT OF VO-TECH	DATE
		FUNDS FOR PURPOSES OF SBAS	MARCH 11, 1985
SPONSOR	MATT HIMSEL		

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITOR'S REGISTER

HOUSE EDUCATION COMMITTEE

SENATE

BILL 175 - INCREASE THE BONUS PAYMENT PER PUPIL DATE MARCH 11, 1985
FOR SCHOOLS THAT CONSOLIDATE

SPONSOR CHET BLAYLOCK

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.