

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON EDUCATION & CULTURAL RESOURCES

Call to Order: By Chairman Ted Schye, on February 8, 1991, at
3:00 p.m.

ROLL CALL

Members Present:

Ted Schye, Chairman (D)
Ervin Davis, Vice-Chairman (D)
Steve Benedict (R)
Ernest Bergsagel (R)
Robert Clark (R)
Vicki Cocchiarella (D)
Fred "Fritz" Daily (D)
Alvin Ellis, Jr. (R)
H.S. "Sonny" Hanson (R)
Dan Harrington (D)
Tom Kilpatrick (D)
Bea McCarthy (D)
Scott McCulloch (D)
Richard Simpkins (R)
Barry "Spook" Stang (D)
Norm Wallin (R)
Diana Wyatt (D)

Members Excused: Rep. Floyd "Bob" Gervais

Members Absent: Reps. Feland and Forrester

Staff Present: Andrea Merrill, Legislative Council
Dianne McKittrick, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

HEARING ON HB 534

Presentation and Opening Statement by Sponsor:

REPRESENTATIVE WILBUR SPRING, House District 77, Belgrade, said some people in Montana's rural areas do not have a vote on the high school board. Historically, each board member represented \$1 million in taxable valuation. Where taxable valuation is up to \$.5 million there is a legal right to representation, but anything less than \$.5 million there is not. HB 534 would make an exception that when there is less than \$.5 million at least one trustee position must be established.

Proponents' Testimony:

Barbara Brown, Clerk, Springhill Elementary School, presented written testimony. EXHIBIT 1.

Jim Gilas, Jefferson County, said 55% of the enrollment in the high school is from outlying districts. The people are not dissatisfied with the school, only the representation. He would like to see HB 534 amended to help outlying districts obtain membership on the board.

Harry Erickson, Superintendent, Belgrade Public Schools, said \$1,418,000 is required to run the Belgrade schools. There is approximately \$10 million in taxable valuation and 7 board members who do not represent the entire area.

Questions From Committee Members: REP. ELLIS asked Barbara Brown if he understood her to say she could not vote in the school election. Ms. Brown answered yes, in the elementary, but many were not given a vote in the high school election.

Closing by Sponsor: REP. SPRING thanked the committee and urged favorable consideration of the bill.

HEARING ON HB 470Presentation and Opening Statement by Sponsor:

REPRESENTATIVE BEA MCCARTHY, House District 66, Anaconda, said HB 470 protects the rights of a tenured teacher when consolidation of schools occur. This bill would also give a non-certified, non-probationary employee preference in hiring for any position with the consolidated or enlarged district when said employee has been displaced by consolidation.

Proponents' Testimony: Dan Evans, Montana Federation of Teachers, (MFT), said the state has given teachers tenure and when consolidation occurs it is often rescinded. There is a need to clarify upon consolidation and a long time teacher is involved. This bill has a number of advantages and tenure can be transferred in consolidation and enlargement.

Eric Feaver, Montana Education Association, (MEA), said loss of tenure through consolidation and enlargement of districts is a problem and one that will be growing with the trend towards the consolidation of smaller districts.

Kay McKenna, Montana Association of County School Superintendents, (MACSS), said the issue of tenure should be taken care of before the annexation becomes final.

Opponents' Testimony: Chip Erdmann, Montana Rural Education Association, presented written testimony. EXHIBIT 2

Garret Franks, Superintendent, Shields Valley Elementary, Park County, said if HB 470 had been in effect when their district consolidated, they would not have done so. The legislation could be more palatable with amendments.

Bruce Moerer, Montana School Boards Association, (MSBA), presented written testimony. EXHIBIT 3

Jesse Long, School Administrators of Montana, (SAM), said if arrangements were made ahead of consolidation concerning tenure, HB 470 would be more easily acceptable.

Closing by Sponsor: REP. MCCARTHY said consolidation and enlargement of smaller districts is happening and along with it goes the problem of teachers losing tenure. She urged favorable consideration of this bill as an effort toward solving some of the problems.

HEARING ON HB 523

Presentation and Opening Statement by Sponsor:

REPRESENTATIVE STELLA JEAN HANSEN, House District 57, Missoula, said HB 523 would require the higher units of education to provide a required course on AIDS. She spoke of the need for this education and said the fiscal note showed no impact since it would require no extra money for the health course.

Proponents' Testimony: **Richard Chiotti, Office of Public Instruction, (OPI),** presented written testimony. EXHIBIT 4

Robert Johnson, Lewis & Clark County Health Department, presented written testimony. EXHIBIT 5

Kay McKenna, Montana Association of County School Superintendents, (MACSS), stated support for the curriculum encouraging AIDS education.

Opponents' Testimony: **John Hutchinson, Commissioner of Higher Education,** said the board feels the substance of HB 523 will be in conflict with the law since it is telling the university system what they shall have in their curriculum by statute. The possibility of a lawsuit would be very real.

Questions From Committee Members: REP. MCCARTHY said it is not stated in the bill whether a current teacher must take the course. REP. HANSEN said the intent of HB 523 is that a student must take the course to graduate.

REP. MCCARTHY asked if only the new teachers must take the course and not those currently out in the field. REP. HANSEN said that would mean the bill would have to be retroactive.

REP. BERGSAGEL asked how the sponsor would feel about Mr.

Hutchinson's concern and REP. HANSEN said she did not believe this bill would give reason for a lawsuit.

REP. BENEDICT said he failed to see how far the Legislature could mandate curriculum. REP. HANSON said she has always supported Commissioner Hutchinson's ideas but the AIDS problem is an issue of a compelling nature that must be addressed.

REP. BENEDICT asked since many young people are killed on highways due to alcohol should the Legislature mandate an alcohol program as well. REP. HANSEN said this is not a treatment program, it is an educational program.

EXECUTIVE ACTION ON HB 217

Motion: REP. HARRINGTON moved HB 217 DO PASS.

Motion: REP. HARRINGTON moved amendments to HB 217. EXHIBIT 6

Discussion: Andrea Merrill said the amendments change the notification requirements.

REP. HARRINGTON said the concern is that all landowners need be notified. Ms. Merrill said no, only the school board would be notified.

Vote: Motion on the amendments CARRIED with Reps. Davis, Stang, Simpkins and Ellis voting no.

Motion/Vote: REP. HARRINGTON made a substitute motion HB 217 DO PASS AS AMENDED. Motion CARRIED unanimously.

EXECUTIVE ACTION ON HB 317

Motion: REP. DAVIS moved HB 317 DO PASS.

Discussion: REP. ELLIS asked if any of the states had returned to just one or the other form of time and was told no.

REP. DAVIS said many people had trouble adjusting to the change in time.

REP. BENEDICT said a farmer has to change his own schedule to adjust to the time change and production often decreases as a result.

REP. HARRINGTON remarked that sportsmen like Daylight Savings Time.

REP. WALLIN said he would prefer to remain on Daylight Savings Time year around.

Motion/Vote: REP. HARRINGTON made a substitute motion TO TABLE HB 317. Motion CARRIED with REPS. DAVIS and BERGSAGEL voting no.

EXECUTIVE ACTION ON HB 273

Motion: REP. KILPATRICK moved HB 273 DO PASS.

Discussion: REP. SIMPKINS stated confusion and REP. KILPATRICK said he was not sure he was the one to answer, but in his opinion it does not have to be the super student who attends this science camp.

REP. MCCULLOCH said this institute has been in existence for years and has done a tremendous job.

REP. STANG said this is a great opportunity for kids.

Vote: Motion CARRIED 12 to 6. EXHIBIT 7

EXECUTIVE ACTION ON HB 523

Motion: REP. COCCHIARELLA moved HB 523 DO PASS.

Discussion: REP. COCCHIARELLA said the committee should consider a resolution instead of a bill involving this legislation.

REP. DAILY said he agreed with REP. COCCHIARELLA.

Motion/Vote: REP. DAILY made a substitute motion HB 523 BE TABLED. Motion CARRIED unanimously.

Motion/Vote: REP. DAILY made a substitute motion to take HB 523 off the table for the purpose of a committee resolution carried by REP. HANSON and arranged by REP. COCCHIARELLA. Motion CARRIED unanimously.

EXECUTIVE ACTION ON HB 54

Motion/Vote: REP. STANG moved to reconsider committee action on HB 54. Motion CARRIED 9 to 5 with REPS. Davis, Clark, Daily, Schye and Harrington voting no.

Motion: REP. STANG moved HB 54 DO PASS.

Discussion: REP. DAILY asked Kay McKenna, (MACSS), to discuss the issue. Ms. McKenna distributed EXHIBIT 7 and discussed the proposed amendments. EXHIBIT 8

Motion: REP. ELLIS moved to amend HB 54.

Discussion: REP. DAVIS spoke against the amendments saying they were not easily understood.

REP. HARRINGTON stated opposition saying this legislation would change teacher certification.

Motion: REP. MCCARTHY moved to amend the amendment so that the contract be with a person with maximum not minimum qualifications.

Discussion: REP. STANG opposed the amendment to the amendment stating it would put the bill right back to where it was tabled.

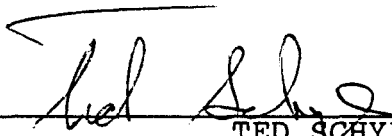
Vote: Motion FAILED 6 to 11 with REPS. BENEDICT, BERGSAGEL, COCCHIARELLA, DAILY, HANSON, MCCULLOCH, SIMPKINS, STANG, WALLIN, WYATT and SCHYE voting no.

Vote: REP. ELLIS' original motion to amend HB 54 CARRIED unanimously.


Motion/Vote: REP. STANG made a substitute motion HB 54 DO PASS AS AMENDED. Motion CARRIED 10 to 7. EXHIBIT 9

ADJOURNMENT

Adjournment: 5:30 p.m.



TED SCHYE, Chair



Dianne McKittrick, Secretary

TS/dMcK

HOUSE OF REPRESENTATIVES

EDUCATION AND CULTURAL RESOURCES COMMITTEE

ROLL CALL

DATE 2-8-91

NAME	PRESENT	ABSENT	EXCUSED
REP. TED SCHYE, CHAIRMAN	✓		
REP. ERVIN DAVIS, VICE-CHAIRMAN	✓		
REP. STEVE BENEDICT	✓		
REP. ERNEST BERGSAGEL	✓		
REP. ROBERT CLARK	✓		
REP. VICKI COCCHIARELLA	✓		
REP. FRED "FRITZ" DAILY	✓		
REP. ALVIN ELLIS, JR.	✓		
REP. GARY FELAND		✓	
REP. GARY FORRESTER		✓	
REP. FLOYD "BOB" GERVAIS			✓
REP. H.S. "SONNY" HANSON	✓		
REP. DAN HARRINGTON	✓		
REP. TOM KILPATRICK	✓		
REP. BEA MCCARTHY	✓		
REP. SCOTT MCCULLOCH	✓		
REP. RICHARD SIMPKINS	✓		
REP. BARRY "SPOOK" STANG	✓		
REP. NORM WALLIN	✓		
REP. DIANA WYATT	✓		

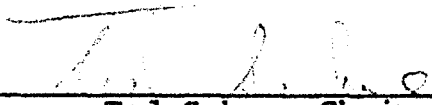
7:45
2-9-91
JDB

HOUSE STANDING COMMITTEE REPORT

February 8, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Education and Cultural Resources report that House Bill 217 (first reading copy -- white) do pass as amended .

Signed: 
Ted Schye, Chairman

And, that such amendments read:

- 1. Title, lines 7 and 8.
Following: "NOTIFICATION"
Strike: remainder of line 7 through "DISTRICT" on line 8
- 2. Page 2, line 3.
Following: "and"
Insert: "and"
- 3. Page 2, lines 5 through 13.
Following: "transfer"
Strike: ";" on line 5 through "comment" on line 13
- 4. Page 3, line 7.
Following: "transferred."
Insert: "Notice must also be delivered to the board of trustees of the school district from which the territory is to be transferred."

HOUSE STANDING COMMITTEE REPORT

February 8, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Education and Cultural Resources report that House Bill 273 (first reading copy -- white) do pass .

Signed: _____

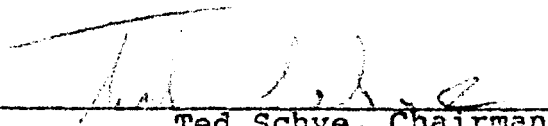
Ted Schye, Chairman

HOUSE STANDING COMMITTEE REPORT

February 11, 1991

Page 1 of 2

Mr. Speaker: We, the committee on Education and Cultural Resources report that House Bill 54 (first reading copy -- white) do pass as amended .

Signed: 
Ted Schye, Chairman

And, that such amendments read:

1. Title, lines 6 and 7.
Following: "PERSON" on line 6
Strike: "RESIDING IN THE COUNTY"
Following: "QUALIFICATIONS;"
Strike: "AND"
2. Title, line 8.
Following: "MCA"
Insert: "; AND PROVIDING AN EFFECTIVE DATE"
3. Page 2, line 6.
Following: "the"
Insert: "full"
4. Page 2, lines 12 and 13.
Following: "person"
Strike: remainder of line 12 through "(2)" on line 13
Insert: " who:
 - (A) is a qualified elector;
 - (B) holds a valid administrative certificate as provided in 20-4-106(1)(c);
 - (C) takes the oath of office in 20-1-202;
 - (D) is bonded in the manner provided for county officers" in Title 2, chapter 9, part 7; and
 - (E) attends instructional training in the duties of a county superintendent as offered by the superintendent of public instruction
5. Page 2, line 15.
Following: "(b)"
Insert: "Whenever a governing body contracts with a person for performance of the duties required of a county superintendent under the provisions of subsection

(3) (a) (ii), the contract must be for at least the duration
of 1 school fiscal year.
(c)"

6. Page 2, line 17.

Insert: "

NEW SECTION. Section 2. Effective date. [This act] is
effective July 1, 1991."

EXHIBIT 1
DATE 2-8-91
HB 534

ex 1

HOUSE BILL 534 Changing Montana School Code Section 20-3-352

In gathering information concerning how many elementary school districts in Montana contained taxpayers who could not vote for trustees in the high school districts to which they sent their children and paid taxes, I contacted Superintendents of Schools in 51 of Montana's 56 counties. As of February 6 I had received 22 responses.

Ten of the counties contained elementary districts whose residents could not vote for trustees in the high school district in which they were located.

Some counties noted that the change in taxable valuations in 1990 will cause some elementary districts to lose their voting privileges. I am attaching correspondence from some counties where this situation exists.

In Gallatin County we have two elementary districts, #20-Springhill, and #25-Pass Creek, who are in the Belgrade High School District. There are 62 registered voters in District #20 who paid a total of \$6,100 in school taxes to the Belgrade District. In Pass Creek there are 58 registered voters who paid a total of \$6,400 in school taxes to the Belgrade District. None of the taxpayers in these districts can vote for a member of the Belgrade School Board because the total taxable valuation of these districts does not equal one-seventh of the taxable valuation of the Belgrade School District. Belgrade is a class A school with a seven member board.

I would like Section 20-3-352 changed so that all taxpayers in a school district can vote for a representative on the school board.

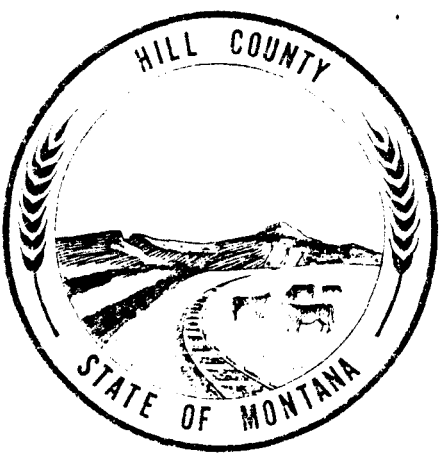
[Handwritten signature]

EXHIBIT # 1
DATE 2-8-91
HB 534

Hill County Superintendent of Schools

315 4th Street
Havre, Montana 59501

Shirley Isbell, Superintendent
Phillis Long, Deputy
(406)265-5481, Ext. 50



DATE: January 28, 1991
TO: Barbara Brown
FROM: Shirley Isbell, Superintendent of Schools
Hill County
RE: House Bill to allow all persons in a school district
to vote for trustees

Your letter of January 23rd has been received, and I will do my best to answer your questions.

There are three elementary districts that appear to be similar to your situation. Until this year, the residents of those districts voted for a representative to the Board who voted on high school issues. This will change in '91 as one of the districts is going to have their own high school and the assessed valuation in another has dropped below that allowed by law. Consequently, these two outlying positions will be dropped and a new at-large position opened. Residents in both districts will have the opportunity to vote for the candidate of their choice in the April election.

The assessed valuation in each of the districts in School District A is:

District 16	\$ 16,975,388.	District 12	\$ 333,297.
District 57	\$ 2,385,743.	District 87	\$ 37,136.

COUNTY COMMISSIONERS

EUGENE (GENE) COWAN
Loring, Montana

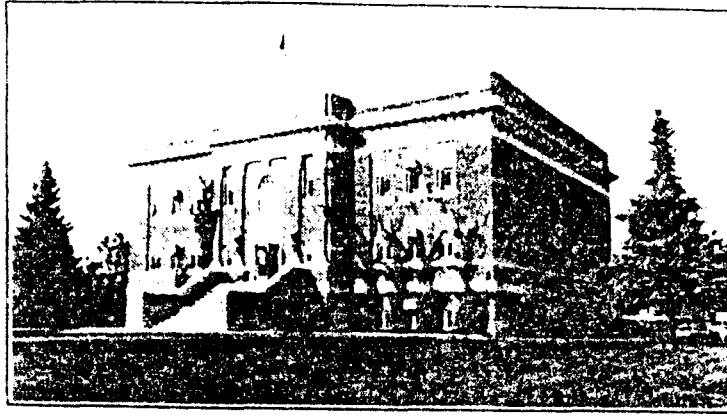
SHERMAN DOUCETIE
Malta, Montana

WAYNE C STAHL
Saco, Montana

Clerk and Recorder
INGELEF I SCHWARTZ

Treasurer
MARION K GOULET

PHILLIPS COUNTY



Malta, Montana
59538

January 29, 1991

Assessor
JEANNE L BARNARD

Sheriff - Coroner
LORN ANDERSON

Clerk of Court
FRANCES WEBB

Superintendent of Schools
GARY A. BADEN

County Attorney
JOHN C MCKEON

Justice of Peace
GAYLE STAHL

District Judge
LEONARD H. LANGEN
Glasgow, Montana

Ms. Barbara Brown
4681 Springhill Community Road
Belgrade, MT 59714

Dear Ms. Brown:

I am enclosing information regarding your inquiry of 01/23/91:

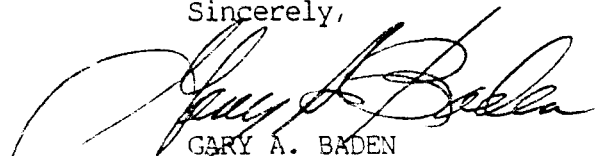
1. A sheet of taxable valuations, color coded per high school district (the assessor compiles these based on a cemetery districting)
2. A copy of last year's valuation arithmetic for the Malta High School District

As you can see, the Malta District has two elementary districts (#6 and #8AA) that do not come up to the arithmetic derivation for a nominating trustee position. (20-3-352 MCA) However, the clerks of those districts submit ballots to their voters, and they participate in the high school election during their district election.

It seems to me that such an arrangement could be made for your situation, thereby avoiding a change in the law while giving you the right to vote in your high school's election. This is a courtesy provided by the high school clerk to the outlying elementary clerk.

You will note that the Dodson High School District contains the Landusky District (#7) and that the arithmetic comes up to the legal requirement for a nominating trustee(s). They have, so far, not availed themselves of the privilege, for whatever reason.

Sincerely,


GARY A. BADEN
Superintendent of Schools

LIBERTY COUNTY, MONTANA

Office of

County Superintendent of Schools

Chester, Mont. 59522

EXHIBIT #1
 DATE 2-8-91
 HB 534

January 30, 1991

TO: Barbara Brown
 FROM: Krys Cole *Krys Cole*
 Liberty County Supt. of Schools
 RE: Outlying Trustee Positions

I thank you for your letter which drew my attention to the representation on high school boards.

With taxable valuations decreasing drastically in some gas and oil districts this past year the representation for the rural district in Liberty County will need to be redesignated.

I have read and reread Sections 20-2-352, 20-3-353, 20-3-354, School Laws of Montana, MCA. 1989, and find that your situation needs to be addressed here.

At this time the voters in #27 are not aware of the need to redesignate. There will be the board meeting in February and more information will be available to present.

Hope the figures below are helpful. Please call if you need more information. (office-759-5216 or home-759-5701)

'90 Registered Voters: #10 = 14
 #27 = 37

1990 - 1991

# 10	160,442.00	**
# 27	475,603.00	
	<u>\$ 636,045.00</u>	

Taxable Valuations:

1989-90	#10	\$ 194,760.00
	#27	2,520,170.00
1988-89	#10	\$ 208,084.00
		3,256,264.00

#33 Elem. 6,570,455.00

#33 H. S. 7,206,500.00

Formula: #33 Elem. \$6,570,455.00 ÷ 5 trustees = \$1,314,091.00 per trustee

Outlying: #10 & #27 \$ 636,045.00 ÷ \$1,314,091.00 = .48 (no representation!)

**School District #10 is a Hutterite Colony with a public school district which does not wish to have representation on the #33 H. S. board.

ROY M. DELONG
Commissioner

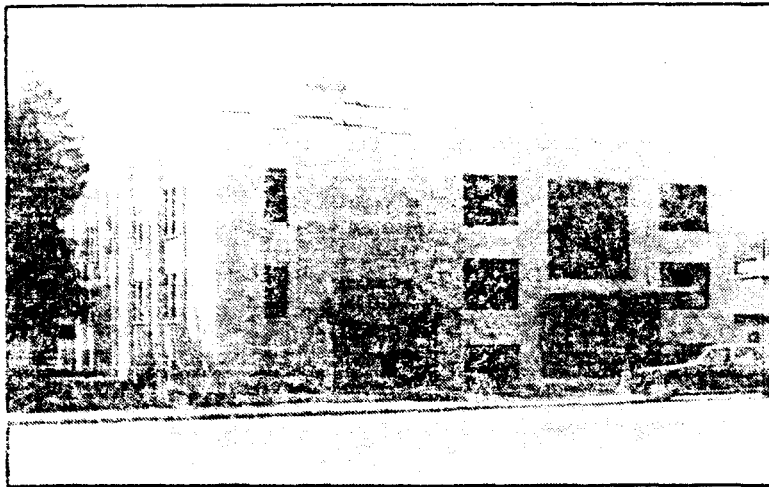
JOHN MUSTER
Commissioner

NORMAN E. RESLER
Commissioner

DIXIE VAUGHT
Clerk & Recorder

ELINE M. THAYER
Treasurer - Supt. of Schools

PATRICIA N. ELDRIDGE
Assessor



LISA FERKOVICH
Clerk of District Court

ROBERT SLOMSKI
Attorney

WILLIAM J. ALEXANDER
Sheriff

DIANNE K. FRANKE
Administrator

MARK A. DENKE
Coroner

ROBERT BEITZ
Justice of the Peace

COUNTY OF SANDERS

STATE OF MONTANA

P.O. Box 519
Thompson Falls, Montana 59873
January 28, 1991

Barbara Brown
4681 Springhill Comm. Rd.
Belgrade, MT 59714

Dear Ms. Brown:

I am not quite sure of question of disenfranchised. However, we do have one school district that lost a trustee of the valuation went down. They were a part of the high school district. That school district is Hot Springs with the elementary district a part of Camas Prairie District # 11.

The Trout Creek elementary district is a part of Noxon High School district. Some parents do send high school students to Thompson Falls district. This is the choice made by the parents. At most I would say that, it would be 20 people. The clerk and recorder could not give me any estimate at all.

Enclosed are the taxable valuations of the elementary schools in Sanders County. If I can be of any further please contact me.

Sincerely,

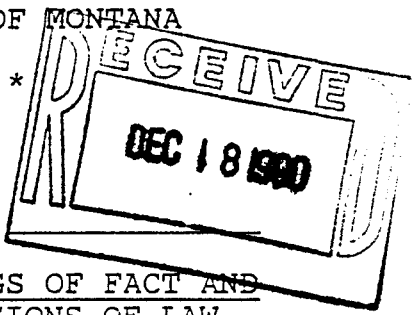
Ted R. Kato
Sanders County Supt.

EXHIBIT 2
DATE 2-8-91
HB 470

442 2

BEFORE BILLIE J. FLEMING, COUNTY SUPERINTENDENT
OF SCHOOLS, PARK COUNTY, STATE OF MONTANA

* * * * *
WILLIAM K. LONG, *
Petitioner, * No.
v. *
SHIELDS VALLEY SCHOOL DISTRICT *
J12-5, BOARD OF TRUSTEES, *
Respondent. *
* * * * *



FINDINGS OF FACT AND
CONCLUSIONS OF LAW
AND ORDER

The above entitled matter was heard on October 25, 1990, before Billie J. Fleming, County Superintendent of Schools, Park County, Montana. Petitioner, William K. Long, appeared with his counsel, J. C. Weingartner. Respondent, Shields Valley School District, appeared with its counsel, Charles Erdmann.

This Hearings Officer conducted a hearing which produced a 126 page transcript. Evidence was received and a record was made on the matter pursuant to Section 10.6.118, ARM.

Following the hearing, the parties filed simultaneous briefs proposed findings of fact and conclusions of law, followed by simultaneous reply briefs. After reviewing the testimony, the record, and the proposed findings of fact and conclusions of law submitted by each party, and the written briefs, this County Superintendent hereby enters the following:

FINDINGS OF FACT

1. Petitioner, William K. Long, was a tenured teacher at the Clyde Park School District for the 1989-90 school year. Petitioner, and other members of the bargaining unit, were covered by a collective bargaining agreement at the Clyde Park School District.

2. Respondent, Shields Valley School District, is a political subdivision of the State of Montana, created and existing under the laws of the State of Montana, and operating schools in Wilsall and Clyde Park, Montana. In 1989 the Wilsall Elementary and High School Districts and the Clyde Park Elementary and High School Districts held elections pursuant to Section 20-6-203 and 20-6-315 to organize new elementary and high school districts. The voters approved the consolidation plan and the Shields Valley School District was created effective July 1, 1990.

3. On October 12, 1989, the Superintendent of the Clyde Park School District recommended that Petitioner (along with all other tenured teachers) be terminated at the end of the 1989-90 school year since the district would cease to exist at that time.

4. On October 12, 1989, the Chairman of the Clyde Park School District wrote a letter to Petitioner which provides as follows:

Dear Mr. Long:

You have been notified by Ed Barich, Superintendent of Clyde Park School District 41/38 & 2, that since Clyde Park School District 41/38 & 2 will no longer exist after June 30, 1990, he is recommending that all tenured teachers be notified that their teaching contracts will not be renewed for the 1990-91 school

year.

Attached to this letter is Section 20-4-204 of the School Laws of Montana which states that you have a right to request a hearing before the Clyde Park School Trustees on this recommendation within ten (10) days of receiving this notice. If you do not wish a hearing, you may waive your right to a hearing by signing the enclosed statement of waiver.

Sincerely,

Dennis Miller

5. On October 13, 1989, Petitioner signed a "Verification of Nonrenewal Notice" which provides as follows:

I verify that I have received notification that Ed Barich, Superintendent of Clyde Park School District 41/38 & 2 is recommending to the Clyde Park School Trustees that my contract not be renewed for the 1990-1991 school year because Clyde Park School District 41/38 & 2 will no longer exist after June 30, 1990.

6. On October 13, 1989, Petitioner also signed a "Statement of Waiver for a Hearing" which provides as follows:

I verify that I have received notification that Ed Barich, Superintendent of School District 41/38 & 2 is recommending to the Clyde Park School Trustees that my contract not be renewed for the 1990-1991 school year because Clyde Park School District 41/38 & 2 will no longer exist after June 30, 1990. I hereby waive my right to a hearing before the Clyde Park School Trustees.

7. On November 8, 1989, the School Board met to consider the recommendations of the Superintendent to terminate the District's tenured teachers. The minutes reflect that no teacher requested a hearing regarding their termination and that the Board took the following specific action pertaining to the Petitioner:

EXHIBIT #2
DATE 2-8-91
HB 534

Superintendent Barich recommended that William Long not be rehired due to consolidation of schools. Bob Queen moved that William Long not be rehired for the 1990-91 school year. Tom Sarrazin seconded this motion . . . All members voted "yes" to these motions.

8. Petitioner did not appeal this action to the County Superintendent of Schools within thirty (30) days of the November 8, 1989 School Board meeting.

9. Petitioner, during the time he taught at Clyde Park high school, was a member of the Clyde Park Federation of Teachers, at one time serving as its President. Before becoming a teacher Petitioner had been employed by the Retail Clerks Association, serving two years as an international organizer and two years as a local shop steward. In addition, Petitioner was a union representative when he worked as a truck driver in the Berkeley Pit in Butte, Montana.

10. That Petitioner had a long history of union activities, was aware of his rights when he signed the statement of waiver, and was not coerced or forced into doing so in any manner.

11. On November 2, 1989, Petitioner applied for a position with the Shields Valley School District. On December 18, 1989, Petitioner received a letter of intent from the Shields Valley School District and was in fact hired for the 1990-91 school year.

12. On July 1, 1990, the Shields Valley School District came into existence and on July 2, 1990, the new district hired Petitioner as a nontenure teacher. On July 25, 1990, Petitioner filed this appeal with the Park County Superintendent of Schools.

EXHIBIT #2
DATE 2-8-91
HB 534

13. Prior to the consolidation election in each school district, meetings were held with both members of the community and the teachers to inform them of the proposed consolidation. The Clyde Park teachers, including Petitioner, were informed at staff meetings prior to the election that their tenure would be lost if the consolidation plan became effective. Dr. Thibeault, a consultant hired by the school boards, stated at public meetings that teachers would lose their tenure.

14. While the Shields Valley School District was able to hire all tenured teachers who applied who had been previously employed by the Wilsall or Clyde Park School Districts, this occurred only because a number of tenured teachers from the two districts did not actively seek employment with the Shields Valley School District. The Shields Valley School District would not have been able to employ all of the tenured teachers who had been employed by the Wilsall and Clyde Park School Districts.

15. That while the Clyde Park school district was in sound financial condition at the time of consolidation, the trend in the district indicated that the district would suffer a loss of families and a loss of tax base in the future and that their financial condition could become precarious.

16. As a result of consolidation, several major changes took place: a) The district boundaries changed; b) the district was considered a new legal entity, obtained a new district number, and had to acquire a new tax identification number; c)

EXHIBIT #2
DATE 2-8-91
HB 534

there were new members on the school board; d) some teaching assignments changed; e) the financial status of the new district is more secure; f) the salary schedule and benefits have changed; and g) better educational opportunities exist for its students.

17. That a collective bargaining agreement between the Clyde Park School District and its teacher's association existed at the time of the consolidation election and during the 1989-90 school year. That no grievance was ever filed pursuant to its terms over the loss of tenure rights or benefits, and no action was ever filed with the Board of Personnel Appeals over any alleged unfair labor practices.

18. That during the time the Clyde Park School Board made the recommendation to terminate the services of Petitioner, pursuant to Section 20-4-204, MCA, 1989, they followed the mandates of the statute and provided Petitioner with his rights to due process.

CONCLUSIONS OF LAW

1. This County Superintendent has jurisdiction to determine this matter pursuant to Section 20-3-210, MCA and Section 10.6.101, ARM.

2. Petitioner was properly terminated by the Clyde Park School Board on November 8, 1989, pursuant to Section 20-4-204, MCA, and he was afforded all due process protections due him.

3. Petitioner did not appeal the decision to terminate his tenure to the County Superintendent of Schools within (30)

days as provided for in Section 10.6.103(5)) A.R.M., and Section 20-4-204(5).

4. By not appealing the decision of the Clyde Park School Board to terminate his tenure, Petitioner's employment and tenure protection were severed as of June 30, 1990.

5. Petitioner was not misled or coerced into signing the "Statement of Waiver for a Hearing" on October 13, 1989, but did so knowing that his tenure protection would be eliminated.

6. Petitioner failed to comply with the requirements of Section 20-4-204, MCA, and Section 10.6.103(5) A.R.M., offered no reasons why he did not do so, and is not now entitled to challenge that termination.

7. That a hearing before the County Superintendent of Schools is not a proper forum to make determinations as to alleged unfair labor practices resulting from the termination of petitioner's tenure rights or loss of fringe benefits.

From the foregoing findings of fact and conclusions of law the County Superintendent now enters the following order:

ORDER


1. That William K. Long's tenure was properly terminated by the Clyde Park School District effective June 30, 1990.

2. As a result, Petitioner's tenure rights did not transfer to the newly created Shields Valley School District.

3. That Petitioner's status as a nontenured teacher with the Shields Valley School District is affirmed.

EXHIBIT #2
DATE 2-8-91
HB 534

DATED this 17th day of December, 1990.



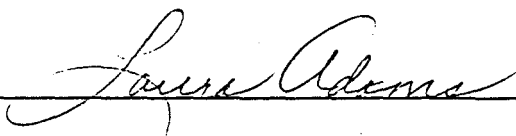
BILLIE J. FLEMING
County Superintendent of Schools

CERTIFICATE OF SERVICE

This is to certify that a true and accurate copy of the
foregoing was mailed on the 17th day of December, 1990,
addressed as follows:

Charles E. Erdmann
Erdmann Law Office
P. O. Box 5418
Helena, MT 59604

J. C. Weingartner
Attorney at Law
222 Broadway
Helena, MT 59601



#2
EXHIBIT _____
DATE 2-8-91 _____
HB 534 _____

EXPLANATORY COMMENT

In making the foregoing findings, conclusions and order in this case the hearings officer was aware of petitioner's position that the Clyde Park School District had no authority to terminate petitioner simply because of consolidation. Based on the circumstances of this case, however, it was my opinion that it was not necessary to address that issue.

The petitioner was a man with many years of experience in union activities, both in the private sector and as President and as a member of the bargaining unit of the Clyde Park Federation of Teachers. He was properly notified of the recommendation of Mr. Barish and his rights under Section 20-4-204, MCA, 1989. Whatever his motivations may have been, he made a rational decision and knowingly signed a "Statement of Waiver for a Hearing" on October 13, 1989, and was formally terminated on November 8, 1989. His own testimony indicates that his decision was not based on any coercion or undue influence. It further indicates that he knew the effects of the board's decision on November 8.

Petitioner offered no reasons why he waited until July 25, 1990, to file his appeal, and none are evident from the transcript. Pursuant to Section 20-4-204 and Section 10.6.103(5) a school controversy case shall be commenced within (30) days after the final decision of the governing authority of the school district is made. This appeal is over seven months late. Since petitioner did not file a timely notice of appeal his tenure

rights were effectively terminated as of June 30, 1990.

Therefore, none existed nor were they transferred to the new district at the time the appeal was filed.

Having failed to diligently pursue his legal and administrative rights petitioner is precluded from challenging his termination at this time. Keller v. School District No. 5, 774 P.2d 409 (Mont. 1989); Schweigert v. Trustees, 163 Mont. 29, 515 P.2d 85 (1973). The time limits set by law are designed to provide for prompt resolution of conflicts such as this. Prompt resolution is in the best interests of all concerned. For example, if petitioner had promptly filed his appeal and had prevailed, the new district would have had time to adjust their budgets and schedules to comply. Now, budgets have been set and it would be difficult for the district to juggle funds and schedules in "mid-stream."

I found, after a review of the transcript and exhibits, that the teachers of the Wilsall and Clyde Park School Districts were informed before the vote on consolidation that tenure would be terminated. Both Mr. Franks and Mr. Barish were sure that that issue was discussed not only amongst themselves but at the staff meetings that were held prior to the consolidation election. Petitioner said that he does not recall if it was or not. Mr. Franks also recalls that tenure was discussed at the public hearings. This fact makes the delay in filing an appeal even more aggravating.

EXHIBIT 72
DATE 2-8-91
HB 534

Petitioner had notice of what his rights were and the opportunity to exercise them. He did not do so in a timely manner and therefore lost his right to challenge the board's decision to terminate his employment and, along with that, any tenure rights and protections that he had.

While I did not decide on the "consolidation" issue, if I had reached that issue I would also have decided against petitioner. I found no statutory or other authority which prohibited termination based on the fact that a school district would cease to exist because it was consolidating with another district. Further, I found no statutory authority which mandated that the new district assume the tenure and salary obligations of the old districts. In fact, Section 20-4-203 clearly indicates that tenure applies only to a specific district. In this case it is clear that a new district was formed and Section 20-4-203 would not apply.

It also appears to this hearings officer that consolidation among smaller districts is a process to be encouraged. Consolidation will generally add to the financial stability of districts and enable them to provide enhanced educational opportunities for their students. Contrary to petitioner's position, I believe that any time that occurs it constitutes a major, positive change. It would be unwise to discourage consolidation by placing impediments in the way unless those impediments are clearly dictated by statute.

EXHIBIT TT d
DATE 2-8-91
HB 534

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EXHIBIT

#2

DATE

2-8-91

HB

534

NOTICE OF APPEAL

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Either party may appeal the decision of the County Superintendent to the State Superintendent of Public Instruction by sending a notice of appeal to the Superintendent within a timely filing date.

A copy of the notice of appeal shall be sent to the Park-County Superintendent of Schools, Billie J. Fleming along with other parties of the controversy. The notice of appeal shall contain the following information:

(a) a caption setting forth the name of the state superintendent of public instruction;

(b) the names and addresses of all appropriate parties;

(c) a clear and concise statement of the matters asserted on appeal;

(d) a statement indicating that appellant has a contested case identifying the county superintendent from which the appeal is taken and whether the state superintendent has proper jurisdiction;

(e) references to the particular sections of the statutes and rules involved;

(f) the signature of the Petitioner and/or his/her attorney;

(g) a copy of the findings of facts, conclusions of law, and order of the county superintendent.

Appeal Procedures as cited in Sections 10-6-122 and 10-6-123 A.R.M.



One South Montana Ave.
Helena, Montana 59601
Telephone: 406/442-2180
FAX 406/442-2194

Robert L. Anderson, Executive Director

MONTANA SCHOOL BOARDS ASSOCIATION

re HB 470

EXHIBIT #3
DATE 2-8-91
HB 470

TO: Terry Minnow, MFT
Phil Campbell, MEA
Chip Erdmann

FROM: Bruce W. Moerer

DATE: February 12, 1991

RE: School District Consolidation

1. When school districts consolidate:
 - (a) a teacher who has tenure in the existing districts shall continue to have tenure if hired by the new district subject to the following:
 - (i) said teacher shall have a hiring preference for the first year with the new district for any position for which he or she is endorsed; and
 - (ii) if said teacher is hired by the new district, he or she shall have salary protection at the initial salary paid him or her by the new district.
 - (b) any other employee of the existing districts shall have a hiring preference for the first year with the new district for any comparable position for which he or she is qualified.

2. When a school district is annexed into another school district:
 - (a) a teacher who has tenure in the annexed district shall continue to have tenure if hired by the annexing district subject to the following:
 - (i) said teacher shall have a hiring preference for the first year for any vacant positions in the annexing district for which he or she is endorsed;
 - (ii) if said teacher is hired by the annexing district, he or she shall have salary protection at the initial salary paid him or her by the annexing district.
 - (b) any other employee of the annexed district shall have a hiring preference for the first year for any vacancy in a comparable position for which he or she is qualified.

Encl 3

#4
-8-91
523

EXHIBIT #4
DATE 2-8-91
HB 523

MEMORANDUM

Representative Ted Schye
Chairman of the House Education Committee
and
Members of the Committee

Richard Chiotti
Office of Public Instruction

February 8, 1991

Testimony in support of HB 523

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Chairman and members of the House Education Committee, my name
Richard Chiotti. I am a health education specialist for the
Office of Public Instruction (OPI). In that capacity I serve as
Director of the AIDS Education Program and as co-director of the
Free Schools and Communities Program within OPI.

Testimony I will present is in support of HB 523.

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HB 523 amends existing state law (20-25-601 through 604 MCA) to
require AIDS education. Since 1972, state law has required all
public and private universities and colleges that offer a degree in
education to establish a health education course that includes
instruction on drugs and alcohol. HB 523 amends the current law to
require AIDS education as a component in the already-required
health education course.

The rationale for this amendment focuses on the importance of
AIDS education in today's world. There is no cure or prevention to
prevent AIDS. Only education can prevent infection with HIV, the
virus that causes the disease we commonly call AIDS. Providing
teachers with an awareness of educational strategies and
AIDS information is a logical and necessary step in the
process to prevent Montana's youth from becoming infected with this
virus. The AIDS cases of tomorrow are in our classrooms
today. Providing awareness to future teachers, who in turn can
provide an awareness to their students, will have a positive
influence on the effort to reduce HIV infection rates among
Montana's young people.

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(continued)

WITNESS STATEMENT

EXHIBIT #5
DATE 2-8-91
HB 523

NAME Robert Johnson BILL NO. HB 523
ADDRESS 316 S Park DATE 2/8/91
WHOM DO YOU REPRESENT? L+C Cof - Cof of Health Dept
SUPPORT ✓ OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

Teachers need to understand the AIDS issue & how ignorance is allowing this killer to spread.

(see reverse side)

Amendments to House Bill No. 217
1st Reading Copy

Requested by
For the House Committee on Education

Prepared by Andrea Merrill.
January 31, 1991

EXHIBIT 6
DATE 2-8-91
HB 217

1. Title, lines 7 AND 8.
Following: "NOTIFICATION"
Strike: remainder of line 7 through "DISTRICT" on line 8
2. Page 2, line 3.
Following: "and"
Insert: "and"
3. Page 2, lines 5 through 13.
Following: "transfer"
Strike: ";" on line 5 through "comment" on line 13
4. Page 3, line 7.
Following: "transferred."
Insert: "Notice must also be delivered to the board of trustees
of the school district from which the territory is to be
transferred."

EXHIBIT # 7
 DATE 2-8-91
 HB 273

HOUSE OF REPRESENTATIVES

EDUCATION AND CULTURAL RESOURCES COMMITTEE

ROLL CALL VOTE

DATE 2-8-91 BILL NO. HB 273 NUMBER _____

MOTION: Rep. Kilpatrick moved ADO PASS
Motion CARRIED 12 aye 6 no

NAME	AYE	NO
REP. TED SCHYE, CHAIRMAN	✓	
REP. ERVIN DAVIS, VICE-CHAIRMAN	✓	
REP. STEVE BENEDICT		✓
REP. ERNEST BERGSAGEL	✓	
REP. ROBERT CLARK		✓
REP. VICKI COCCHIARELLA	✓	
REP. FRED "FRITZ" DAILY	✓	
REP. ALVIN ELLIS, JR.		✓
REP. GARY FELAND		
REP. GARY FORRESTER		
REP. FLOYD "BOB" GERVAIS	✓	
REP. H.S. "SONNY" HANSON		✓
REP. DAN HARRINGTON	✓	
REP. TOM KILPATRICK	✓	
REP. BEA MCCARTHY	✓	
REP. SCOTT MCCULLOCH	✓	
REP. RICHARD SIMPKINS		✓
REP. BARRY "SPOOK" STANG	✓	
REP. NORM WALLIN		✓
REP. DIANA WYATT	✓	
TOTAL	12	6

MONTANA
ASSOCIATION OF
COUNTIES

2711 Airport Road
Helena, Montana 59601
(406) 442-5209
FAX (406) 442-5238

TO: Chair Ted Shye
House Education Committee

FROM: *Gordon Morris*
Gordon Morris, Executive Director

DATE: February 6, 1991

RE: House Bill 54

EXHIBIT 7
DATE 2-8-91
HB 54

House Bill 54 is a priority issue for County Commissioners. This bill is seen as affording counties a contracting option with qualified persons and is in sharp contrast to the limited option to contract with another County Superintendent.

In an effort to satisfy all concerns, we will support the requirement for "administrative certification" as outlined in the amendments. Please give the amendments and the resulting bill your consideration.

Finally, I am confident that with these changes, the education community opponents would withdraw opposition.

Enclosure

EXHIBIT #7
DATE 2-8-91
HB 54

1 HOUSE BILL NO. 54

2 INTRODUCED BY L. NELSON

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW A COUNTY THAT
5 CONSOLIDATES THE OFFICE OF COUNTY SUPERINTENDENT OF SCHOOLS WITH
6 ANOTHER OFFICE TO CONTRACT WITH A PERSON RESIDING IN THE COUNTY
7 WHO MEETS STATUTORY QUALIFICATIONS; ~~AND~~ AMENDING SECTION
8 20-3-201, MCA; AND PROVIDING AN EFFECTIVE DATE."
9

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 Section 1. Section 20-3-201, MCA, is amended to read:

12 "20-3-201. Election and qualifications. (1) A county
13 superintendent ~~shall~~ must be elected in each county of the state
14 unless a county manager form of government has been organized in
15 the county. The county superintendent ~~shall~~ must be elected at
16 the general election preceding the expiration of the term of
17 office of the incumbent.

18 (2) Any A person ~~shall be~~ is qualified to assume the office
19 of county superintendent who:

20 (a) is a qualified elector;

21 (b) holds a valid teacher certificate issued by the
22 superintendent of public instruction; and

23 (c) has ~~not less than~~ at least 3 years of successful
24 teaching experience.

25 (3) (a) When the office of county superintendent of schools
26 is consolidated with another county office within the county, the
27 officeholder ~~shall~~ must have the qualifications of listed in

1 subsection (2) or he shall, with the approval of the governing
2 body, contract for the ~~services of another county superintendent,~~
3 ~~with approval of the governing body of that county, to perform~~
4 the FULL performance of the duties required of a county
5 superintendent in 20-3-207 and 20-3-210. ~~The officeholder may~~
6 ~~contract for the services of~~ with:

7 (i) another county superintendent, with the approval of the
8 governing body of that county; or

9 (ii) a person residing in the county who: meets the
10 qualifications listed in subsection (2);

11 (A) IS A QUALIFIED ELECTOR;

12 (B) HOLDS A VALID AMINISTRATIVE CERTIFICATE;

13 (C) TAKES THE OATH OF OFFICE AS PROVIDED IN 20-1-202;

14 (D) IS BONDED IN THE MANNER PROVIDED FOR COUNTY OFFICERS IN
15 TITLE 2, CHAPTER 9, PART 7; AND

16 (E) ATTENDS INSTRUCTIONAL TRAINING IN THE DUTIES OF A
17 COUNTY SUPERINTENDENT AS OFFERED BY THE OFFICE OF PUBLIC
18 INSTRUCTION to perform other duties required by law of a county
19 superintendent.

20 (b) WHENEVER A GOVERNING BODY CONTRACTS WITH A PERSON FOR
21 PERFORMANCE OF THE DUTIES REQUIRED OF A COUNTY SUPERINTENDENT
22 UNDER THE PROVISIONS OF SUBSECTION (3) (A) (II), THE CONTRACT
23 MUST BE FOR AT LEAST THE DURATION OF 1 SCHOOL FISCAL YEAR.

24 (c) The superintendent of public instruction shall
25 prescribe a contract form to be used."

26 SECTION 2. EFFECTIVE DATE. THIS ACT IS EFFECTIVE JULY 1,
27 1991."

EXHIBIT # 7
DATE 2-8-91
HB 54

Amendments to House Bill 54

1st Reading Copy

1. Title, line 7.
Strike: "AND"
2. Title, line 8.
Following: "MCA"
Insert: "; AND PROVIDING AN EFFECTIVE DATE"
3. Page 2, line 7.
Following: line 6
Insert: "full"
4. Page 2, line 12.
Strike: "residing in the county"
5. Page 2, line 12.
Following: "who"
Insert: :
6. Page 2, lines 12 and 13.
Strike: "meets the qualifications listed in subsection (2)"
7. Page 2, line 13.
Insert: "
(A) is a qualified elector;
(B) holds a valid administrative certificate;
(C) takes the oath of office as provided in 20-1-202;
(D) is bonded in the manner provided for county officers in Title 2, chapter 9, part 7; and
(E) attends instructional training in the duties of a county superintendent as offered by the office of public instruction"
8. Page 2, line 15.
Following: "(b)"
Insert: "Whenever a governing body contracts with a person for performance of the duties required of a county superintendent under the provisions of subsection (3)(a)(ii), the contract must be for at least the duration of 1 school fiscal year.
(c)"
9. Page 2, line 17.
Following: line 16
Insert: "NEW SECTION. Section 2. Effective date. This act is effective July 1, 1991."

Amendments to House Bill 54

1st Reading Copy

EXHIBIT #18
DATE 2-8-91
HB 54

1. Title, line 7.
Strike: "AND"
2. Title, line 8.
Following: "MCA"
Insert: "; AND PROVIDING AN EFFECTIVE DATE"
3. Page 2, line 7.
Following: line 6
Insert: "full"
4. Page 2, line 12.
Strike: "residing in the county"
5. Page 2, line 12.
Following: "who"
Insert: :
6. Page 2, lines 12 and 13.
Strike: "meets the qualifications listed in subsection (2)"
7. Page 2, line 13.
Insert: "
(A) is a qualified elector;
(B) holds a valid administrative certificate;
(C) takes the oath of office as provided in 20-1-202;
(D) is bonded in the manner provided for county officers in Title 2, chapter 9, part 7; and
(E) attends instructional training in the duties of a county superintendent as offered by the office of public instruction"
8. Page 2, line 15.
Following: "(b)"
Insert: "Whenever a governing body contracts with a person for performance of the duties required of a county superintendent under the provisions of subsection (3)(a)(ii), the contract must be for at least the duration of 1 school fiscal year.
(c)"
9. Page 2, line 17.
Following: line 16
Insert: "NEW SECTION. Section 2. Effective date. This act is effective July 1, 1991."

EXHIBIT #9
 DATE 2-8-91
 HB 54

HOUSE OF REPRESENTATIVES

EDUCATION AND CULTURAL RESOURCES COMMITTEE

ROLL CALL VOTE

DATE 2-8-91 BILL NO. 54 NUMBER _____

MOTION: Rep. Stang made substitute motion
DO PASS AS AMENDED.

NAME	AYE	NO
REP. TED SCHYE, CHAIRMAN		✓
REP. ERVIN DAVIS, VICE-CHAIRMAN		✓
REP. STEVE BENEDICT	✓	
REP. ERNEST BERGSAGEL	✓	
REP. ROBERT CLARK		✓
REP. VICKI COCCHIARELLA	✓	
REP. FRED "FRITZ" DAILY		✓
REP. ALVIN ELLIS, JR.	✓	
REP. GARY FELAND		
REP. GARY FORRESTER		
REP. FLOYD "BOB" GERVAIS		
REP. H.S. "SONNY" HANSON	✓	
REP. DAN HARRINGTON		✓
REP. TOM KILPATRICK		✓
REP. BEA MCCARTHY	✓	
REP. SCOTT MCCULLOCH		✓
REP. RICHARD SIMPKINS	✓	
REP. BARRY "SPOOK" STANG	✓	
REP. NORM WALLIN	✓	
REP. DIANA WYATT	✓	
TOTAL	10	7