

MINUTES

MONTANA SENATE 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON EDUCATION

Call to Order: By SENATOR CHET BLAYLOCK, on March 11, 1991, at
3:00 P. M.

ROLL CALL

Members Present:

Chet Blaylock, Chairman (D)
Harry Fritz, Vice Chairman (D)
Robert Brown (R)
Bill Farrell (R)
H.W. Hammond (R)
Dennis Nathe (R)
Mignon Waterman (D)
Bill Yellowtail (D)
Dick Pinsoneault (R)

Staff Present: Andrea Merrill (Legislative Council).

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

HEARING ON HB 116

Presentation and Opening Statement by Sponsor:

REPRESENTATIVE DOROTHY CODY, House District 21, presented HB 116, an act which would repeal a rule that requires each school to have a gifted and talented children program.

Sponsor said this bill is not anti-gifted/talented children's program but a bill that speaks of rules. She felt that the Board of Education overstepped its bounds. The law says programs are permissive; the rule says programs are mandate.

The Attorney-General's office gave an opinion. The bill is a long standing battle; started in 1979 when the law was enacted. In 1983, the Board mandated a gifted and talented rule and the Code Committee at that time notified them that the rule was invalid; that they did not have statutory authority; Board of Public Education at that time noticed and repealed the rule. They then initiated another rule which said it was mandated. The Attorney-General gave an recent opinion which said that the rule is invalid. Code Committee feels bill is necessary.

REPRESENTATIVE CODY said that "once we take action, decide that the rule is invalid, notify the agency of our decision and they

don't address it (regardless of the Attorney-General's opinion), it has to be addressed or we will find ourselves in the position of having to accept any rule that any agency wishes to mandate".

The sponsor said that legislative history does not demonstrate that the statute was intended to place a mandatory duty upon school districts to implement a program for gifted/talented students but rather to permit the creation of such programs and to provide limited funding for them through the Office of Public Instruction.

Proponents' Testimony:

MARY LOU PETERSON, House District 1 (serves on Code Committee).

Speaker said if we are going to keep our process of legislation intact, then we have to "draw a line in the sand" and say that the legislation makes the laws and departments implement rules to carry out the laws and that has to come down in this case.

Opponents' Testimony:

WAYNE BUCHANAN, Board of Public Education.

Speaker commended Representative Cody on the gracious handling of the bill. It has been described as a "turf" battle between the Board of Public Education and the Legislature.

Speaker said that he doesn't believe there is any kind of conflict between the Legislature and the Board of Public Education. There is great mutual respect on the part of both.

He said that it is a fact that some of the board members feel that there is a constitutional question here (that needs to be answered) and they feel that there is special constitutional mandate given to the Board of Public Education since there are only two boards that are constitutionally established--Board of Regents and Board of Education.

He said that the Attorney-General's opinion that Representative Cody referred to ruled not on the constitutional authority of the Board but specifically narrowed its ruling to the statutory authority. Based on the statutory authority, there can't be any argument at all.

He said that the rule is effectively dead because of the Attorney-General's opinion. He said that it is not quite true that the Board failed to do anything. There has been considerable discussion on this. The Board met two weeks ago on this matter. The Board felt that the only way to repeal this rule would be serve notice of hearing. Soonest date would be May board meeting. The Board did vote to notify all school districts that the Board considers the rule dead on the basis of the Attorney-General's opinion. Thinks the amendment that

Representative Cody has added to the bill is a good one.

GAIL GRAY, Office of Public Instruction.

Ms. Gray said that OPI feels that this is an issue of jurisdiction. OPI wants to emphasize continued support for programs and opportunities for gifted and talented students. Appreciate Representative Cody's amendment and how she has handled this issue.

Request delay action by committee on this bill until after the Board of Public Education meets again which will be March 21-22. OPI is hopeful that they will reconsider their action and make this particular bill unnecessary.

Questions From Committee Members:

SENATOR PINSONEAULT asked Wayne Buchanan why (since the Board of Education feels so strongly about their authority) they don't take the matter to court for a decision.

WAYNE BUCHANAN said that if this matter could be resolved between the Board and the Legislature without some sort of court procedure, it should be done that way.

REPRESENTATIVE CODY added that some Board members did not want a court ruling; apprehensive of outcome.

SENATOR FRITZ asked for clarification of date of next meeting of Board of Education.

WAYNE BUCHANAN said that the Board does meet in March but in order to get it noticed properly (takes 30 days in Administrative Record) would have to be heard at May meeting.

SENATOR FRITZ asked what would happen at the May meeting of the Board.

WAYNE BUCHANAN said he did not know.

SENATOR WATERMAN asked what would be accomplished next week in light of the fact that they can't give notice that they are going to repeal it.

GAIL GRAY said that they it will be their intent to repeal; they had hoped this legislative bill would not have been necessary.

SENATOR WATERMAN to Representative Cody. Two ways to resolve this: (1) Board of Public Education to withdraw rule; (2) Legislature to repeal their law. If you believe so strongly in gifted education, why don't you choose to repeal and allow them to establish a rule of mandate.

REPRESENTATIVE CODY said that the Board of Education could have

come to the Legislature and asked for repeal of statute but they didn't. Several opportunities in past sessions to change the law. Thinks if they had not liked this (since 1983), they could have changed it by now. It could have been done but they refused. As far as waiting for March--she doubts actions will be taken at that time.

SENATOR WATERMAN asked if Representative Cody had considered changing the law when bill was considered?

Representative Cody said that she had not. The subcommittee did consider coming up with a committee bill but they could not agree on what needed to be done.

SENATOR WATERMAN said that she thought the reason they don't introduce the bill is because they believe that they have the authority to establish the rule; should be done within the budgets allowed.

Closing by Sponsor:

REPRESENTATIVE CODY closed the hearing saying that the Attorney-General's opinion states that (re: the area of gifted and talented children) the Board of Education is restricted to the adoption of policies under 20-2-121. She was specific that the legislature's choice was not to mandate but to let the Board establish a policy so that OPI could fund programs for gifted and talented children. She urged the committee not to wait until March meeting for decision.

HEARING ON HB 347

Presentation and Opening Statement by Sponsor:

REPRESENTATIVE GERVAIS, House District 9, presented HB 347 which would exempt school districts from nepotism laws.

The bill has been amended to where the relative on the Board would not vote with 100 percent of the other board members voting.

Proponents' Testimony:

STEVE BROWN representing the Indian Impact Schools.

The bill addresses a problem for school districts on reservations and in rural areas of Montana. The bill as originally submitted to legislative council was intended to target reservation area schools but in preparing that legislation, the legislative council advised that there might be some constitutional problems with limiting the scope of the bill so it was decided to take the approach taken in HB 347.

Important fact that in most Indian cultures, the extended family

is important, definite part of their culture. As a result, the existing nepotism laws create severe problems in small rural schools.

It is obvious that the intent of the present law is to prevent someone from being hired solely on the basis of relationship with a member of school board but it might also keep a qualified relative from being considered for employment in the school district; discourage and limit others. On Indian reservations where the majority of the population is Indian, those people might be reluctant to run for school board positions and thus the school board might be made up of non-Indian people.

Speaker said the recent Attorney-General's opinion re: nepotism law applies to appointments for new positions. Exhibit 2

Protection built into bill as follows:

(1) Fifteen days notice before any relative could be hired; Notice must include newspaper advertisement of intended action.

(2) Effected trustee cannot vote to hire relatives to teaching positions.

(3) There must be a unanimous vote from all remaining trustees to hire the relative.

Other proponents:

CHIP ERDMAN, MT Rural Education Association

This situation found in many rural areas. Position sometimes called "an acting" position to get around the law. Speaker feels this is not a right way to deal with the law. In other areas, it was found that the nepotism statute was ignored because there was no choice. Some places a clerk couldn't be hired because everyone was related. He said that MREA supports this bill; thinks it takes care of problem in a reasonable fashion.

RAYMOND "JAKE" PARKER, JR., Member of Board of Trustees for School District 87J and Rocky Boy High School; Tribal councilman on Chippewa Cree Business Committee. Exhibit 3.

Speaker states that Rocky Boy School District is major employer of reservation; Unemployment among Indian population as high as 75 percent. About 100 people employed through school system. He said that on reservation, they are faced with the nepotism law monthly because of problems encountered in filling jobs. High demand for Indian teachers but those training cannot return to teach in their own communities because of this law. Problem not unique to Indian reservations but all rural communities.

Other proponents:

DICK HUGHES, Superintendent, Box Elder Schools
KAY McKENNA, County Superintendent of Schools

Questions from the committee:

SENATOR PINSONEAULT asked the procedure for initiating an audit. Chip Erdman said that there is no provision right now for what Senator was describing. He said that he thought Chairman Blaylock could answer question because of his dealings with Pryor School District. School districts must have biannual audit.

SENATOR YELLOWTAIL asked for chart on the degrees of consanguinity. Andrea Merrill, Legislative Counsel, and Chip Erdman explained consanguinity and infinity.

CHAIRMAN BLAYLOCK said one of the reasons the present nepotism law was in effect was because of problems on the reservations regarding relationships, hiring, etc., The last time the committee considered this law was because problems in eastern Montana and on the reservations were brought to the attention of the committee. He said good safeguards were built into the bill but he wondered if the bill passed, could there be the same problems of fighting, dishonesty, etc.,

SENATOR STEVE BROWN said that there may be those who try to subvert the law. All you can do is give people a mechanism for blowing the whistle if it doesn't work. Thinks there are adequate safeguards built in, voting procedures, etc., Thinks bill is needed but can't give 100 percent assurance.

Closing by sponsor:

SENATOR GERVAIS closed, thanking committee for good hearing.

HEARING ON 436

Presentation and Opening Statement by Sponsor:

Representative Peck, House District 15, sponsored HB 436, an act to revise the definitions and provisions related to special education of children with disabilities.

Gail Gray, OPI, presented HB 436 to committee. She referred to HB 436 as a non-controversial, non-appropriations, housekeeping bill drafted at request of the Superintendent of Schools for following reasons:

- (1) Make law consistent with language used in the Education of the Handicapped Act (federal level. It has nothing to do with the number of students identified/type of services received).
- (2) Need to comply with the Department of Education for approval of the Montana State Plan (written every two years for funding).

(3) Wanted to change the title of the term "mentally retarded" to "cognitive delay". Reason for change: The Special Education Advisory Panel recommended that this be changed to reduce stigma of that disability. Title changed; definition remains the same.

(4) Wanted to make certain that districts have the ability to spend state special education money made available to them. (Each year - 33 million dollars in state special education money allocated based on number of students, identification of services needed; they don't get same amount of money each year even if appropriations same). Asking that if the district gets more money than they received year before in a state special allocation, that increase would be put in their miscellaneous revenues account the first year and built in the second year.

Kay McKenna, County School Superintendents, in support of HB 436.

Questions by committee:

CHAIRMAN BLAYLOCK asked about the changing of language and terms used in the bill. Gail Gray said other states have done this. This recommendation came out of two year study by Special Education Advisory Counsel. She said that sometimes a "label" is an additional handicap.

SENATOR FRITZ said that at the University of Montana, the term "disabled" is no longer used but rather "differently abled".

SENATOR FARRELL asked about funding of special education and if it were sometimes included in the general fund. Gail Gray said that in all districts, special education is in the general fund. It is in a separate sub-fund.

SENATOR FARRELL asked that with this section is another fund being created or being allowed to transfer. Thought special education was funded separately. Gail Gray said that the caps are still in; the only amount that we are talking about being put into miscellaneous revenues account is an additional amount if the district received additional money for a particular reason. Senator asked if they could do that under Section 4 now and Gail Gray said they never had. Representative Peck said that Special Education and General Fund are built separately and then put together under which the cap applies so if there is an increase in special education allocation from the state, that would be up against the cap and would force general education money out to provide for the special education money.

Closing by sponsor:

Representative Peck said Senator Farrell had "zeroed in on the meat of the bill" where a lot of language is being taken out of the big appropriations bill and it is going into statute under this other bill; dealing with the contingency fund that is provided for the schools for unanticipated costs.

EXECUTIVE ACTION ON HB 105Discussion:

There was discussion between Senators Hammond, Brown and Pinsoneault, Chip Erdman and Eric Feaver regarding HB 105 and the Supreme Court ruling and how it applied to HB 105.

ERIC FEAVER said that his understanding of the Supreme Court ruling is that "if you were a \$40,000 a year administrator and you returned to the classroom, you would receive \$40,000 a year as a classroom teacher; teacher salary would catch up. There would be no administrative increases while you waited for the teacher's salary to catch up. This is how it has been applied; maybe some school districts that continued to pay an administrative salary increase--that's their option. There are examples. We never had one that was contested.

CHAIRMAN BLAYLOCK asked Loren Frazier if he had further testimony. Mr. Frazier said that he thought the biggest fear for educators is that the negotiated agreements that are in the district do not promote security. He said that Bruce (Moerer) assures me that if you have 17 years of a principalship, you can go in at 17 years on a teacher's salary. But if you were a principal for 17 years in one town and moved to another and took a first year position, do you have tenure in that district to move down with the teachers or are you just going for one year?

SENATOR HAMMOND said that the bill states that a RIF'd administrator will be given first opportunity to take another position that comes open. Frazier: Yes, it does but if it is a in Havre where the non-tenured teachers are leaving, that principal could leave that district and not have a right to that position.

SENATOR HAMMOND said that this could be better than the current law because at this time administrators in teaching positions are not always offered administrative positions that come open. Mr. Frazier said that is often the fault of the administration because they apparently have transferred that administrator to a teaching position when there should have been an evaluation and/or termination rather than a transfer but the administration did not have the courage to take that step.

SENATOR WATERMAN also discussed this, saying that she assumed the reason they didn't rehire that administrator was because they didn't want him/her back which says the administration didn't have the courage to make a decision about evaluation. Trustees/administrators don't adequately evaluate and instead of making a decision about evaluation, they might move the administrator into a teaching position even though they know he/she is not a good teacher because they can't evaluate. Senator Waterman said we won't save \$50,000 in this state in the

next decade with this bill and it won't solve any problems. What we need is evaluation of administrators/training programs.

Senator Hammond said that there have been cases when administrators were hired who had not taught. There is a requirement now that they have to have teaching experience.

SENATOR PINSONEAULT said that there are people who are very good teachers and good with kids but do not make good administrators because they cannot supervise other adults (teachers).

Vote:

SENATOR PINSONEAULT made a motion of DO CONCUR HB 105. 7 -aye; 1 - no. (Waterman) MOTION CARRIED. Senator Blaylock - carrier.

EXECUTIVE ACTION ON HB 348

Discussion:

SENATOR YELLOWTAIL said there is a large amount of foreign made jewelry/craft work being sold in Montana/national parks as authentic Indian jewelry. Tourists usually don't the difference. It not only is disappointing to the Indian people and hurts their economy but it is quite unfair to the tourist who pays a good price for something not authentic.

Motion and vote:

SENATOR BROWN made a motion DO CONCUR HB 348. Motion carried. Senator Yellowtail - carrier.

EXECUTIVE ACTION ON HB 431

Discussion:

CHAIRMAN BLAYLOCK said that he had a request to hold HB 431 for a standing committee report.

Amendments, discussion and vote:

Amendments to HB 431 (Eddy McClure, Legislative council) proposed for bill.

CHAIRMAN BLAYLOCK read a note from Representative Peck who said that "Representative Bardanouve amended out statutory provisions on HB 431. I now have him agreeable to making all \$6.00 go into the State Special Revenue account and one to the General Fund instead of \$3.00 to the General Fund. This is (Representative) Schye's bill and he has been informed about it so I assume he will propose the amendment. Just wanted you to know that 'Bard' will not resist the amendment. (Signed: Ray Peck)".

SENATOR WATERMAN asked if these amendments refer to the total

amount of \$6.00 (certification fee). Answer is yes.

This bill raised the certification fee from \$5.00 to \$6.00 with the total amount now going to the State Special Revenue account. It would be about \$58,000 total.

SENATOR WATERMAN said that it is their intention to set up a mentor program with this money. She said that it will help train teachers going into the classroom. This is their fee and if better teachers are needed, we must start moving toward it.

Motion and vote:

SENATOR WATERMAN moved that the amendments to HB 431 be adopted. 7 - aye; 1 - no. (Hammond) Motion carried.

SENATOR WATERMAN moved that HB 431 be concurred . Unanimous vote. Motion carried.

Senator Waterman - carrier.

EXECUTIVE ACTION ON HB 462

Discussion:

SENATOR WATERMAN said that she had asked for some information from Dorie Nielson regarding 3/20 mile limitations in this bill. She asked for postponement of voting until information was received and evaluated. Voting on HB 462 was postponed.

EXECUTIVE ACTION ON HB 347

Discussion:

Senator Yellowtail said that he knew that it was mainly Native American interests that brought this bill but he would suspect that it might be a major problem in many small and rural communities. He felt like the nepotism rule is already being abused and that HB 347 will only increase the abuse.

CHAIRMAN BLAYLOCK also expressed concern regarding the passage of HB 347. He said that Senator Yellowtail is right. Also said that he was involved in the Pryor School investigation and felt that nepotism was part of the problem there. There were a lot of people working for that school, alot of money being spent and many things going on that were unlawful. Many of their difficulties were brought about by abuse of the nepotism rule.

SENATOR NATHE said that he had seen situations in the school district that were quite intense because of the nepotism rule even though everything else was "above board and legal". He said that people tend to be nervous when school board members are related to one another and to the administrators and/or teachers.

SENATOR HAMMOND moved and withdrew motion that HB 347 be

concurrent.

EXECUTIVE ACTION ON HB 436

Discussion:

SENATOR FARRELL said that there is no fiscal impact; however, there will be. It is probably the way the system should have been. What has happened is that school districts are bumping up against the caps by using special education funding. Now they are going to enforce that which they should have been doing all along in the first place; i.e., to move that increased amount out into the special education account through miscellaneous fund accounts which will allow them to project their general fund for general education. There will be some money moved around but it is the way it should have been.

Motion and vote:

SENATOR BROWN moved HB 436 to be Concurred. Unanimous. Motion carried. Senator Brown - carrier.

ADJOURNMENT

Adjournment At: 6:00 P. M.

Chet Blaylock
SENATOR CHET BLAYLOCK, Chairman

Betsy Clark
BETSY CLARK, Secretary

CB/bc

SENATE STANDING COMMITTEE REPORT

Page 1 of 2
March 13, 1991

MR. PRESIDENT:

We, your committee on Education and Cultural Resources having had under consideration House Bill No. 431 (third reading copy -- blue), respectfully report that House Bill No. 431 be amended and as so amended be concurred in:

1. Title, line 10.

Following: "~~DUTIES,~~"

Insert: "TO STATUTORILY APPROPRIATE PART OF THE REVENUE FROM THE FEES FOR USE BY THE CERTIFICATION STANDARDS AND PRACTICES ADVISORY COUNCIL FOR RESEARCH IN ACCORDANCE WITH ITS DUTIES;"

2. Title, line 11.

Following: "~~17-7-502,~~"

Insert: "17-7-502,"

3. Page 3, line 6.

Following: "~~1991-1-1~~"

Insert: "Section 1. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations -- definition -- requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111; 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424; 17-5-804; 19-8-504; 19-9-702; 19-9-1007; 19-10-205; 19-10-305; 19-10-306; 19-11-512; 19-11-513; 19-11-606; 19-12-301; 19-13-604; 20-4-109; 20-6-406; 20-8-111; 20-9-361; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-1016; 23-5-1027; 27-12-206; 37-51-501; 39-71-2504; 53-6-150; 53-24-206; 61-2-406; 61-5-121; 67-3-205; 75-1-1101; 75-3-1108; 75-11-313; 76-12-123; 80-2-103; 82-11-136; 82-11-161; 90-3-301; 90-4-215; 90-4-613; 90-6-331; 90-9-306; and section 13, House Bill No. 861, Laws of 1985.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and

securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for such payments. (In subsection (3), pursuant to sec. 10, Ch. 664, L. 1987, the inclusion of 39-71-2504 terminates June 30, 1991.)"

Renumber: subsequent sections

4. Page 3, line 20.

Following: "~~used~~"

Insert: "to the credit of the state special revenue fund account, created in subsection (2), to be used"

5. Page 3, lines 24 and 25.

Strike: "TO" on line 24 through "(2)" on line 25

Insert: "for expenses of the certification standards and practices advisory council created in 2-15-1522"

6. Page 4, lines 4 and 5.

Strike: "TO" on line 4 through "FUND" on line 5

Insert: "to the board of public education to be used by the certification standards and practices advisory council for research in accordance with the duties of the council provided for in 20-4-133"

7. Page 4, line 12.

Following: "~~by~~"

Strike: "MUST BE USED FOR EXPENSES OF"

Insert: "to be used for the purposes of subsection (1)(b) is statutorily appropriated, as provided in 17-7-502, to the board of public education for use by"

8. Page 4, line 14.

Following: "~~2-15-1522~~"

Strike: "CREATED IN 2-15-1522"

Signed: Chet Blaylock

Chet Blaylock, Chairman

LB 3/13/91
Amd. Cpord.

SR 5/14 8:01
Sec. of Senate

STATE JOURNAL

Any rule they wish ■

A dispute over programs for gifted-and-talented students in Montana continues to spur debate over the constitutional power of the state board of education.

For several years, the state board has been trying to establish a rule requiring school districts to offer gifted-and-talented programs.

A number of districts have resisted the idea, however, citing its high cost.

Moreover, a legislative committee in charge of overseeing state-agency regulations has argued that the board does not have the legal authority to issue such a rule.

The issue came to a head last month, when the state attorney general formally declared that the board's regulation was invalid.

Although the ruling has the force of law, unless overturned by a court, a hearing before the House Education Committee last month showed that the gifted-and-talented controversy is still alive in the legislature.

Members of the board and such groups as the Montana Education Association argued that, if the board does not have the authority to require gifted-and-talented programs, the legislature should pass a law doing so.

But Representative Dorothy A. Cody said the legislature still should pass her bill repealing the regulations—not least, as a warning to other agencies.

If lawmakers do not act, Representative Cody predicted, "You're going to set a precedent of telling these other state agencies that they can enact any rule they wish."

3-11-91

Exhibit 1, -HB 116

OFFICE OF
GLACIER COUNTY ATTORNEY

14 EAST MAIN STREET
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CUT BANK, MONTANA 59427

PHONE: 406-873-2278

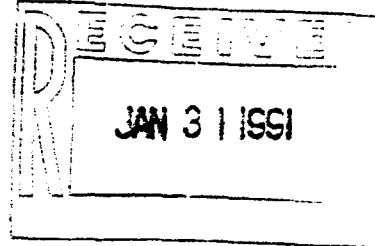
JAMES C. NELSON
COUNTY ATTORNEY

FAX: 406-873-2643

LARRY D. EPSTEIN
DEPUTY COUNTY ATTORNEY

January 30, 1991

Rep. Ted Schye, Chairman
House Education & Cultural
Resources Committee
Capitol Station
Helena, MT 59620



In Re: House Bill-347

Dear Chairman Schye and
Members of the Committee:

I am writing this letter in support of HB-347. I would have preferred to testify personally at the hearing on the bill Friday, February 1st, but a conflict prohibits me from coming to Helena.

I have served as the County Attorney for Glacier County, Montana, for the past twelve years. As you know, the Blackfeet Indian Reservation is located almost entirely within Glacier County. School District No. 9 takes in most of the Reservation. There are three other school districts in Glacier County, two on the reservation and one off the reservation.

During my years as County Attorney, I have been faced with numerous allegations of nepotism involving Glacier County school district boards and, in particular, the Browning School District. Generally, school districts within the County have had problems with or questions about the nepotism laws at least annually. Those in School District No. 9 seem to be the most severe and most reoccurring, however. During the year 1989 and in the early part of 1990, for example, violations of the nepotism laws became so rampant in the Browning School District that four of the six trustees resigned following the issuance of an Attorney General's Opinion (43 AGO 23 (1989)) which held that the nepotism laws apply to school districts located within Indian reservations.

I do not believe that the affected trustees had any intention of violating the law -- most had faithfully served the District for a number of terms and had been re-elected by the community even though various relatives of the trustees were employed by the District. Nevertheless, they were caught between a rock and a hard place, and as a result the District lost some experienced, hard working people on the Board.

Exhibit 2 - HB 34

Page Two
January 30, 1991

I am bringing these matters to your attention, not to criticize School District No. 9, but to emphasize the point that nepotism is a serious problem in rural school districts in general and in Indian reservation school districts in particular. Indian communities are homogeneous and family relationships tend to predominate even more than in non-Indian communities. It is often difficult, if sometimes not impossible, to find qualified people to run for school boards from rural communities and from Indian communities because candidates know that employment opportunities for their relatives -- which are already scarce -- may be even more limited by the nepotism statutes if the office seeker is elected. To make matters worse, the school district is likely one of the largest employers in small communities and on Indian reservations, and the school board is comprised of a greater number of elected officials than are other public bodies.

HB-347, as amended, represents a reasonable and well thought out approach to solve this problem. I urge your favorable consideration of HB-347, and request that this letter be included in the record in support of the bill.

Respectfully,



James C. Nelson

JCN:mjp

cc: Charles E. Erdmann
Sen. Del Gage
Rep. Bob Gervais

BLACKFEET NATION

P. O. BOX 850

BROWNING, MONTANA 59417

(406) 338-7179

EXECUTIVE COMMITTEE

TOM WHITFORD SR., CHAIRMAN
BERNARD ST. GODDARD, VICE-CHAIRMAN
MARVIN WEATHERWAX, SECRETARY
LELAND GROUND, TREASURER

EX. 2
3-11-91
HB 347
TRIBAL COUNCIL

TOM WHITFORD, SR.
BERNARD ST. GODDARD
MARVIN WEATHERWAX
LELAND GROUND
CHARLES DEROCHE
ROGER SASSY RUNNING CRANE
LLOYD H. CURLY REEVIS
DARRYL GORDO HORN
DONALD P. LITTLE DOG

June 6, 1989

Mr. Marc Racicot, Attorney General
State of Montana
Department of Justice
215 North Sanders
Helena, MT 59620

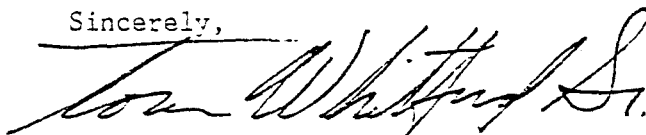
Dear Mr Racicot:

We feel that the Npotism Law, as it pertains to the School District in Browning, Montana, could impose a hardship on the community.

The School District is the largest employer on the Reservation of both professional and supportive personnel. When one considers the relatively small population base and the economic conditions of our community, it becomes apparent that Board Members will run afoul of the current law.

We have confidence in the elected officials of the Board of Trustees and feel that the community would not continue to elect those Board Members that they felt were abusing their position.

Sincerely,



TOM WHITFORD, SR., Chairman
Blackfeet Tribal Business Council

TW/bl:hlg

cc: Chrono File

HARLEM PUBLIC SCHOOLS

SCHOOL DISTRICT NO. 12

Junior-Senior High
P.O. Box 339

Elementary
P.O. Box 309

Harlem, Montana 59526

Date: February 1, 1991

From: Donald A. Wetzel
Superintendent School District #12

To: Legislative Hearing Committee H. B. 347

BOARD MEMBERS

BILL GREEN
Chairman

BILL STIFFARM
Vice Chairman

GAIL ADAMS
Board Member

GARRY McGUIRE
Board Member

DON RICHMAN
Board Member

The School trustees of District #12 support representative Gervais and H. B. 347. Revising the nepotism law to authorize school district trustees to appoint a relative to a position is a key element throughout Indian country. Not only does this affect native americans but all urban schools have difficulty with the nepotism law as it is written.

In many cases, as is the case for school district #12, a Native American Board member may have over 100 to 200 hundred relatives who would fall under the current nepotism laws. With unemployment running 50 - 70% on our reservations why compound the problem with the current nepotism laws. Again with high unemployment under the current system Native American businesses cannot get work in the District if a relative is a board member.

We must consider the human element, the need for work to address our unemployment situations in Indian Country. Being able to work and have jobs is a key to many things. When the head of the family is working family unity is improved. Self-esteem and self-worth rises and the threat of drug and alcohol problems decrease.

Let's not compound our problem, support H.B. 347.

DONALD A. WETZEL
Superintendent
353-2287

KATHLEEN PEREZ
Business Manager
353-2287

JAY ESICK
Jr./Sr. High Principal
353-2288

BILL ROBINSON
Elementary Principal
353-2258

Fax:
(406) 453-287-

The Youth Are Our Most
Valuable Resource —
Our Future

PUBLIC TESTIMONY
IN SUPPORT OF H.B. 347

PRESENTED TO:

Montana State Senate
Senate Education Committee
March 11, 1991 - 3:00 p.m.
State Capitol
Room 402
Helena, Montana

PRESENTED BY:

Raymond "Jake" Parker, Jr.
Board of Trustees
School District 87-J
Rocky Boy Elementary School - P.O. Box 620
Box Elder, Montana 59521
(406) 395-4291

Good afternoon Mr. Chairman and members of the Montana Senate Education Committee. I am here today to testify on House Bill Number 347 that will exempt School Districts from the Nepotism Law.

My name is Raymond "Jake" Parker, Jr. and I am a member of the Board of Trustees for School District 87-J, Rocky Boy Elementary School. I am also a school board member for the Rocky Boy High School, a BIA Grant School that will become a public high school on July 1, 1991. Finally, I am a tribal councilman and serve on the Chippewa Cree Business Committee.

First, I would like to thank Representative Gervais and others for introducing this needed legislation in the Montana House of Representatives. This legislation is greatly needed in rural areas and on Indian Reservations.

The current law states:

"...it is unlawful for any person or any member of any board, bureau, or commission or employee at the head of any department of this state or any political subdivision thereof to appoint to any position of trust or emolument any person related or connected by consanguinity within the fourth degree or by affinity within the second degree."

As many of you are aware, the unemployment rate on Indian reservations have varied from 35% to 75% during the past (10) years. For many of our people, to secure gainful employment is of utmost importance, even if the position is a custodian, bus driver or teacher assistant.

The Rocky Boy Schools is the major employer on the Rocky Boy Reservation. Between the elementary and high school, we employee

nearly 100 personnel which includes classified employees such as janitors, secretaries, clerks, bus drivers, cooks to certified school personnel such as teachers, principals and the superintendent of schools.

Because we are a small rural community, we are faced with the current Nepotism Law at almost every monthly meeting because our classified employee turnover rate is high. Another problem we encounter every month is hiring substitute teachers, temporary cooks, teacher aides and bus drivers. For bus drivers, this is extremely difficult because we have very few qualified bus drivers. Because of this problem, we often must have our transportation supervisor, home school coordinator and in some cases, teachers drive bus when two regular bus drivers are on sick leave.

We currently have few teachers of Chippewa-Cree descent working for the Rocky Boy Schools even though the demand for Indian teachers is very high. We are lucky to have two teacher training programs at Stone Child College that works in cooperation with Northern Montana College, Eastern Montana College and Montana State University. Sometimes in the near future these potential teachers will want to return to Rocky Boy to teach; however, if they are related to a school board member they will not be able to teach in their own community. This is not an unique problem to Rocky Boy or on Indian reservation, but a problem to all rural communities. A teacher from a rural community often wants to return to their "roots" and in many cases, the current Nepotism Law prevents this.

The original proposed new section of Section 2-2-302 was proposed to read as follows:

(b) school district trustees if the trustees unanimously approve the appointment of a person related to a trustee and the trustee(s) related to the appointee abstain from voting;

Regarding the second change requiring a 15 day public notice, we have no problem with this change. However, it could pose a problem if a vacant position must be filled immediately. I would recommend that the public notice be left in. However, the Board of Trustees should be allowed to fill the position on a temporary basis, if needed. If the public does not question the Board of Trustees' appointment, the person appointed to the position should be able to assume the position after the 15 days has expired.

Mr. Chairman, I will be more than willing to answer any of yours or Committee members questions.

In behalf of School District 87-J Board of Trustees, I would like to thank you very much for allowing me to speak in behalf of H.B. 347.

Respectfully Submitted:


Raymond "Jake" Parker, Jr.

3-11-91
Date

3-11-91

Education

Please sign: _____

VISITORS' REGISTER

(Please leave prepared statement with Secretary)