

## **MINUTES**

### **MONTANA SENATE 53rd LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON EDUCATION**

**Call to Order:** By Senator Blaylock, on March 3, 1993, at 3 p.m.

#### **ROLL CALL**

##### **Members Present:**

Sen. Chet Blaylock, Chair (D)  
Sen. Harry Fritz, Vice Chair (D)  
Sen. John Brenden (R)  
Sen. Bob Brown (R)  
Sen. John Hertel (R)  
Sen. Daryl Toews (R)  
Sen. Mignon Waterman (D)  
Sen. Bill Yellowtail (D)

**Members Excused:** Senator Stang and Senator Wilson

**Members Absent:** None.

**Staff Present:** Eddy McClure, Legislative Council  
Sylvia Kinsey, Committee Secretary

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

##### **Committee Business Summary:**

Hearing: HB 210  
Executive Action: None.

#### **HEARING ON HOUSE BILL 210**

##### **Opening Statement by Sponsor:**

Representative Ray Peck, Senate District 15, Havre explained HB 210 as a simple bill that would give the definition of attendance centers and was caught up in a lot of controversy over what the bill did not do and said that many have even named this bill the Hutterite bill. It has nothing to do with Hutterite colonies per se, the reason it is related to Hutterite colonies is because they are active in this area in terms of creating attendance centers. He said an attendance center is a nebulous concept in Montana and the definition of an attendance center is not found in the Montana school law book. The definition of attendance center is found in an Attorney General's opinion and this bill would deal with establishing this definition in law.

Representative Peck handed out a sheet with potential cost of what could happen if HB 210 did not pass and, in regard to the advantage which he believed existed legally, were to be taken advantage of. (exhibit 1) He explained his process of coming up with the potential cost and said in his mind, the state was operating illegally at the present time with the attendance centers.

Representative Peck said HB 210 had substantive changes only on page 3, line 18 and again on page 9, line 12. He said the key provision of people who would object to the bill was probably the language which said a school attendance center must be located within the boundaries of the school district that establishes the center. He suggested the committee throw the fiscal note away because it was not meaningful or accurate. He said our finance laws say if you have an increase of 6% or more, you get into a special category and your budget totally comes out of the school equalization account. We have eight districts in Montana that are public school districts, established by Hutterite colonies and operated by them, they are legal and there is no argument with them. He said there is no limit on this and soon the eight Hutterite colonies could be running attendance colonies all over Montana under current law since you do not have to be adjacent to or contiguous to or anything because there is no law on it. He read on page 9, line 12 the new language and said there is a provision in law, page 8, starting on line 5 that talks about not having to aggregate them if they are more than three miles outside any incorporated community, city or town. This bill says regardless, if you are going to run an attendance center you are going to have to aggregate the ANB. This will not give a bonus to running small attendance centers outside of the area. Representative Peck said he was concerned that Home Schools would also use the present law to form groups and start attendance centers and the cost could be extremely high to the state of Montana. He said there are two colonies of Hutterites who send their children to public schools, and pointed out there are three different types of Hutterite colonies in Montana. They are sort of determined or defined based on the conservatism or the liberalism they have. He believe there would be a savings if the attendance centers were closed, but that is not the intent of the bill.

Representative Peck went through his figures on exhibit 1 and posed the question of who would be responsible for special education requirements etc.. He said the bottom line is, do we assume we can do anything not forbidden by law, or do we assume we can do only what the law says we can do.

Chair Blaylock asked for a show of hands of those who were proponents and opponents and allocated 40 minutes to each side. He said if the proponents did not take up the full 40 minutes, the opponents would still be allowed their 40 minutes, since there were many more of them.

**Proponents' Testimony:**

Robert Windel, Superintendent of Schools in Havre, spoke in favor of House Bill 210. He said a Hutterite colony had applied to the Havre district to have an attendance center and Havre turned them down. Cottonwood district asked for an agreement to do this and Havre turned the district down. A second colony made the same request and was turned down. House Bill 210 solves this situation by saying the attendance center must be within the boundaries of the school district establishing the attendance center. He said HB 210 does not prohibit attendance centers, it allows local folks to deal with local issues. He said in some areas an attendance center at a Hutterite colony has been approved and in other cases, such as Havre, the request has been denied for financial reasons. He pointed out in some small school districts it was financially appealing to increase their ANB by 6% or more, while the amount of students to do this in a small district was a mere "drop in the bucket" to a district such as Havre. He said the foundation program pot does not get any larger, and the slices of the pie simply get cut into smaller slices and other children lose. He said busses were available and Hutterite children could attend the public schools which had plenty of room for them. It was the colonies that were denying the children the education by not sending them to the public schools.

Jerry Yeager, Teacher in Choteau and speaking as a taxpayer, said he questioned whether we really need all these attendance centers. He said "it is not you and I stopping these kids from attending public schools, it is the Hutterite colonies themselves who do not allow them to attend". The Hutterites tell them they do not send their children to public schools because of public ridicule, who they are and what they wear but teachers deal with ridicule every day.

Robert Snodgrass, Penderoy, said he was in complete support of House Bill 10. He is a former school trustee and resigned because of an attendance center being established. He said the colony was within 10 miles of the Penderoy school with room, teachers, etc. and the attendance center was a complete waste of money and effort. He said he would like to see a vote of the taxpayers before an attendance center could be set up.

Representative John "Sam" Rose, District 11, Choteau, said he fully supported House Bill 210 and did not believe attendance centers gave a better education, it was strictly a money concern.

**Opponents' Testimony:**

Dori Nielson, OPI, spoke as an opponent and handed out testimony from Jack Copps, Deputy State Superintendent, OPI. (exhibit 2) She said Mr. Copps, Superintendent Keenan and the assistant superintendents are meeting with school district superintendents

today and could not be here. Mr. Copps asked her to not read the testimony so time could be saved for others wishing to testify. She said many schools have a separate building to make space for classes, in case of a fire they may rent space in different areas, or in the case of a high school with 7th and 8th graders, may have in effect two schools under the same roof. In their office a school is determined as an accreditation unit. An accreditation unit means whatever unit has to meet accreditation standards. There are certain standards for K-8, K-6, 7-8, middle school standards and high school standards. Consequently they call those schools, and they have to meet the standards that are there whether they have to do with certified teachers, library, guidance, class size, etc. and unless they meet complete accreditation standards, they will not be funded. She explained that an attendance center is not a school; it is a part of a school in general, it is a location. The location might be a school, it might be only a classroom unit of a school. She said a unit did not get any money from the state unless they met accreditation standards.

Lowell Knowlen, Billings, representing the Hutterite colonies, gave written testimony. (exhibit 3)

Gwyn Anderson, Choteau, Teton County Supt. of Schools spoke in opposition to HB 210. She handed out a sheet on attendance centers affected by HB 210. (exhibit 4) She also handed in her testimony, as well as a Teton County map showing the Miller Colony and the New Rockport Colony. (Exhibit 5 and 6) Some testimony previously had referred to holding school in a building that was also used as a church. She said the only thing that might connect it to being a church during school hours was the pews at the back of the room. The children all had desks, and she handed out pictures showing what the school room looked like and compared it to other schools serving multi grades. (exhibit 7)

Eli Hofer spoke in opposition to HB 210 and handed in his testimony. (exhibit 8)

Jill Siderius, New Rockport School handed in testimony for herself and her supervisor, Charlotte Tacke. (exhibits 9 and 10)

Edward J. Wipf, German teacher, Martinsdale Colony, said he appreciated this chance to voice his opposition to HB 210. He gave some history of efforts to receive education for their children. School district 15, Two Dot, refused a petition for an attendance center on the colony. Given the attitude of the Board, they chose to petition the county superintendent and the petition was granted, the Board was not in favor and it went to the County Commissioners to rule it down.

Richard W. Cameron, Superintendent, Lavina Public Schools spoke in opposition to HB 210 and handed out copies of his testimony. (exhibit 11)

Jacob Wipf, President of Miller Colony, Choteau spoke in opposition to HB 210 and handed in copies of his testimony. (exhibit 12)

Stacy Hyatt, Miller Colony, School District 12, spoke briefly and gave written testimony in opposition to HB 120. (exhibit 13)

David Hofer, Board Chairman of Liberty Elementary District #10, Liberty County, Montana, said he was strongly opposed to House Bill 120.

Lennis Limesand, former County Superintendent of Schools at Chester, Liberty County, said he became acquainted with the Hutterites about 17 years ago, and said the two colonies up there could both have become their own districts years ago, but did not believe they had traditionally tried to "pump" the state for money. In all those years they had or tried to have, certified teachers. One of these colonies is not on the bus route and by the time you get into transportation he did not believe it would save much money.

Elias P. Wipf, President of the New Rockport Colony said they are opposed to HB 210 because they feel it would undermine their children's constitutional rights to education. He did not feel that because of the life they lead or the dress they wear that their children should be denied that right and the passage of HB 210 would be a detriment to their schools and the lives of their children.

Scott Haynes, Board member of School District 45, Teton County, said they sponsor an out-of-district school and strongly oppose HB 210.

Don Waldron, Montana Rural Education Association, handed in written testimony in opposition to HB 210 and said there were a couple recommendations for amendments in it. (exhibit 14)

Susan Luinstra, Supervising teacher at Bynum Elementary School, said she is opposed to this bill. She said if members of the committee could come to her school and see how it is operated, they would realize they really do have a public education there.

Sam Hofer, School Overseer for the Springdale Colony at White Sulphur Springs said they have a private school. He has been following this issue and this bill lacks substance in so far as an educator's point of view should be concerned and was strongly opposed to HB 210.

**Informational Testimony:**

None.

**Questions From Committee Members and Responses:**

Senator Waterman addressed a question to Representative Peck. She said he used the sample that a school district in South Western Montana could establish an attendance center up by Havre. She asked if this would not have to be approved by both those districts and Representative Peck said yes.

Senator Toews addressing Dori Nielson, said a comment was made that all schools could be considered attendance centers. Ms. Nielson said any place that school is offered is going to be in a location, and a location is an attendance center. Within that attendance center there might be both a high school and a junior high in the same building. We would have two schools but one building. One location, but two schools because there are separate accreditation standards. There might also be an attendance center that is merely a classroom attached to another building. Because they are meeting the accreditation standards, they are part of another school. The attendance center is just defining a location where a program is offered.

Senator Towes asked if she had knowledge of any of these schools that have an attendance center in a different district that had tried to petition to join another district. Ms. Nielson said no. Senator Toews asked about moving the territory, not just the school and Ms. Nielson said she knows territory has moved. There are a couple of territories that have moved; parents can move territories to another district and that has happened.

Senator Waterman said the concern was raised about the 6% picked up by the state when you go above the 6% increase in enrollment. Between 0% and 6% there is no funding, and what is being said here is that once you hit that 6%, above that it is all state funded. Ms. Nielson said above 6% you would be funded and receive your ANB, not total funding, only for the amount you would have been eligible for ANB funding. You would go back to your ANB which is funded already and if above the 6% increase you have 10 more students, those 10 would receive ANB funding. It is only the amount that would have been allowed for ANB state funding for those above the 6%.

Senator Waterman said then they are not getting additional state funding for those students that is any different from what they would have gotten for their base number of students. Ms. Nielson said it means in the recalculation, the base goes down a little bit for all of the students. Senator Waterman said she wanted to follow this up because it sounded as though we were picking up the total cost for those students. Ms. Nielson said no, we are not picking up the total cost, only the share of ANB.

Senator Hertel asked Superintendent Cameron of Lavina if they were receiving ANB for the role they are playing in this 41 M district and was told yes, they receive money for the 21 students they service at the Colony. Senator Hertel asked if this were true, even though it was in another district and Supt. Cameron said they have an interlocal agreement with Ryegate which allows

them to operate an attendance center at the Colony. They receive the ANB money for those students, then absorb the costs, pay the teacher and operate the schools, Ryegate does not.

Senator Hertel asked how many hours their teacher performs her duties in this school and Mr. Cameron said they have a full time teacher and a full time aide there. They are there the same amount of time that the staff in Lavina is. He said that school follows the same hours, goes through the same process, follows the same curriculum, they are in the process of replacing their textbooks and they will have the same textbooks used in Lavina. We are talking about putting a computer out there, and are talking to Mr. Hofer who is the German teacher there, about computers. We have calculators out there, and we have special ed services we provide through the Co-op at Lewistown. The only thing is that the building is on the Colony, they maintain it, clean it, and the students are fed by the people there. There is no hot lunch program or transportation to pay for, and have grades 1-8 and next year will probably have K-8.

Senator Waterman asked if she was correct in that if they did not have the interlocal agreement, they would be in the Ryegate School District and was told yes that Ryegate chose not to do so for reasons of their own. Mr. Cameron said he could speak for the Ryegate School and the Ryegate Superintendent, that they are happy with our interlocal agreement and have signed a letter that will go to the Governor, so stating.

Chair Blaylock asked if he had been out to the school to observe it and was told quite frequently. Chair Blaylock asked if, in all the times he had gone out there, he had ever observed religion being taught. Mr. Cameron said absolutely not, and could assure the committee there is no religion being taught. He said the teacher and aide operate the same as in any rural school in Montana where you have a multi-grade situation.

Chair Blaylock addressed Representative Peck by saying when he started his presentation he said it was not aimed at the Hutterite schools. Representative Peck said this is much broader than that.

Chair Blaylock said he was confused in that all of the discussion as well as the presentation from Representative Peck's and testimony from Mr. Windel from Havre, focused on Hutterite schools. Representative Peck said he had explained that the reason we are dealing with these more specifically is because these are the groups that are pushing attendance centers at the present time. That is the opposition here, it is not coming from public school districts. The purpose of the bill is to define attendance centers. There is nowhere in the law where it addresses the definition of attendance centers.

Senator Waterman told Representative Peck that he had stated the purpose of the bill is to define attendance centers. First of

all she was not sure why they needed to be defined in the law, why not define them then and include attendance centers that are outside of the district as well. She asked why an attendance has to be established only within the boundaries of the district. Representative Peck said he had pointed out there are a lot of legal issues such as special ed and who is responsible. They have said in the testimony that it is in the agreement, but he was not sure the federal government is going to recognize that if there is a question about special education. He believed the district of residence was the one responsible.

Senator Waterman said we have special ed that is provided to Inter Mountain here in Helena, and it is not the district of residence that provides it. She believed state law handles special ed. Representative Peck said he believed she was referencing psychiatric care. House Bill 999 was passed last time, dealing with the payments, making it a state responsibility because very small districts could not take care of those kinds of expenditures. Basic responsibility is on the local district for special education.

Chair Blaylock asked Superintendent Windel if it was correct that the Colony up there asked Havre school district to enter into an interlocal agreement with them. He asked how many times they had asked and Mr. Windel said the interlocal agreement is something that is entered into by two governmental entities and the way the process worked there--there are two colonies and both of them requested first to the Havre Board of Education to become attendance centers. That was denied and they went to another school district and asked them if they would ask the Havre school district to enter into an interlocal agreement.

Chair Blaylock said, then the Havre School Board turned that down, which is their right. He asked what their objection was if the Colonies went to another school district and asked if they would do it. Mr. Windel said he felt it becomes a political situation. There is a difference in large and small schools since 6% of 20 students is different than 6% of 2700 students and the question that comes back to the Havre Board of Trustees is, "well, Cottonwood would do it, why wouldn't you do it?" and that creates a lot of different types of questions. He believed it was the prerogative of the local board to say no. The concern he had is that we start cutting that piece of foundation pie into smaller slices and that has a detrimental effect on children they have in their school district.

Chair Blaylock said the testimony was given here that in many of the interlocal agreements with these people, the schools are being run cheaper than they are somewhere else. He did not know if it was costing more money, saving more money, or staying about the same. Mr. Windel said the budget for ANB in Havre public schools for an elementary student is about \$3,000. They budget in Cottonwood, the small school, \$10,000 plus dollars per student. That is budget for ANB. Expenditure, we realize is



another question, but if you budget \$10,000 for ANB, there must be a reason but he did not know the specifics of what the other individuals testified to. He was talking about what is happening in his area, and there is a distinct difference in what Havre budgets for elementary students and what Cottonwood budgets. He said the amount exceeds three times.

Senator Waterman said she understood these folks have approached you for establishing an attendance center and you chose not to do so. They approached Cottonwood and Cottonwood has agreed to establish an attendance center, but can only do it with the approval of the Havre School Board. Mr. Cameron said that is correct.

Senator Waterman said you have denied them that, so the whole discussion of \$10,000 for cost of education in Cottonwood is moot because Cottonwood cannot establish that attendance center because Havre is blocking it. She asked if that was correct and Mr. Cameron said he did not know that it was a moot issue. Senator Waterman asked how they could do it and Mr. Cameron said Cottonwood Public Schools have budget for ANB that exceeds \$10,000. Senator Waterman said, but they cannot establish these attendance centers unless you allow them to do so. Mr. Cameron said Cottonwood is an elementary school district. Senator Waterman said she knew that, but Cottonwood cannot establish an attendance center at the Colony unless you allow them to do so, so regardless of what Cottonwood now spends and will spend per ANB, they cannot increase that ANB by establishing an attendance center at the Colony unless you approve it. She asked if that was correct and Mr. Cameron answered yes.

Senator Waterman said then there is no additional cost to educating the students at the Colony by Cottonwood unless you allow that to happen, so you simply blocked this from the Colony. Mr. Cameron said the Board of Trustees simply denied the interlocal agreement.

Senator Waterman said, the Colonies choice, given this refusal by your board, is they either send their children to public school to Havre, off the Colony, or establish a private school as she understood the other two Colony schools in Hill County have had to do. Mr. Cameron answered yes.

Senator Brenden made a statement that he had told the County Commissioners at his interview that he was personally opposed to County school consolidation, but if the local schools wanted to close their schools they should be allowed to do so rather than be mandated to do so by the state government.

**Closing by Sponsor:**

Representative Peck closed by reiterating that the purpose of this bill was to define attendance centers, and was not an attack on Hutterites. He said we should focus on the bill and commented

on testimony given by the opposition, generally repeating what had been stated in his opening statements. Some of the comments follow.

Ms. Nielson defined what an attendance center was, but could give no authority for that definition, it is a rule of man, not of law and it was his belief that we are living by the rule of man in regard to the definition of attendance centers.

Rep. Peck said he did not know where Mr. Knowlen comes from, and pointed out many parts of Mr. Knowlen's testimony that he did not and could not agree with.

Representative Peck said Mr. Knowlen makes a big issue of providing the services at less cost. We are involved in a big problem in public school funding. No one has equity, and when you make a public operation out of this you should know your obligation to fund those Hutterite children, giving them an education at a level commensurate with any other child. You have no way of avoiding that, and he believed that is what the Court has said.

Representative Peck urged the committee members to read the A.G. opinion. He said in the opinion, there is a strong paragraph that cautions us and public school officials to be very observant about what you are creating in terms of the lines you must walk in the law.

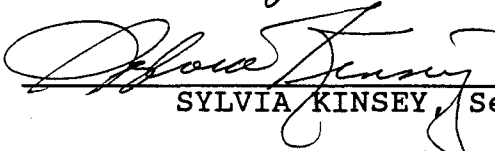
The statement was made that there were only the five attendance centers, and that would be correct if there is no further growth of attendance centers. Representative Peck suggested with the atmosphere now, we would see more attendance centers. He said he believed he had heard Ms. Anderson support vouchers, and urged the committee to think about that one. He protested the agreement of the Colony to supply crayons and supplies to the school and said this could not be done. When you make this a public responsibility, they are the responsibility of the public coffers.

Representative Peck proposed two amendments and explained them to the committee. (exhibit 15 and 16)

ADJOURNMENT

Adjournment: 5:20 p.m.

  
CHET BLAYLOCK, Chair

  
SYLVIA KINSEY, Secretary

CB/sk

# ROLL CALL

SENATE COMMITTEE EDUCATION

DATE 2/3/93

[illegible]

F08

Attach to each day's minutes

IN NOVEMBER, 1992 THE "GREAT FALLS TRIBUNE" REPORTED THAT ~~THERE~~ WERE FORTY-ONE HUTTERITE COLONIES IN MONTANA WITH TWO NEW ONES UNDER CONSTRUCTION -- ONE NEAR CUT BANK AND ONE NEAR CONRAD. IF WE ASSUME FORTY-THREE COLONIES, WE CAN BREAK THEM DOWN -- EDUCATIONALLY SPEAKING -- AS FOLLOWS.

EXHIBIT NO. 1  
DATE 3/3/91  
BILL NO. 48210

43 total number of colonies in Montana  
-8 colonies with public school districts  
35  
-11 public school at colony w/multiple schools in dist  
24  
-7 extension of an existing school where dist has estab-  
a center at colony  
17 colonies operating own schools

FOLLOWING IS THE CURRENT OPERATING COSTS OF THE EIGHT PUBLIC SCHOOL DISTRICTS UNDER THE CONTROL OF HUTTERITE COLONIES.

COUNTY	DISTRICT	ENRLMT.	FY93 BUDGET	PER STD.
Blaine	N. Harlem Dist No. 6	10	\$ 37,024	3702
Fergus	King Colony Dist. No. 40	6	31,987	5361
Fergus	Spring Creek Colony Dist. 104	5	31,987	6397
Fergus	Ayers Dist. No. 222	8	33,250	4156
Glacier	Mt. View Dist. No. 64	23	75,150	3267
Hill	Gildford Colony Dist. No. 89	9	40,822	4536
L & C	Auchard Creek Dist. No. 27	22	48,924	2198
Liberty	Liberty Dist. No. 10	12	35,924	2994
		95	334,372	3520

WITHOUT GOING OUT TO DISTRICTS OPERATING ATTENDANCE CENTERS, IT IS NOT POSSIBLE TO COME UP WITH ACTUAL COSTS OF THOSE DISTRICTS OPERATING CENTERS. ASSUMING THAT THE EIGHT SEPARATE DISTRICT SCHOOLS WOULD REPRESENT A REASONABLE COST FOR SUCH OPERATIONS, WE CAN PROJECT A TOTAL CURRENT COST FOR THE 18 OTHER COLONIES WHO ARE BEING SERVED BY AN ATTENDANCE CENTER OR SCHOOL.

\$ 41,796 X 18 = \$ 752,328 est. cost of attd. centers FY93  
334,372 cost of eight separate dists.

1,086,700 current total cost

\$ 41,796 X 17 = 710,532 potential add. cost if all re-  
ceive approval as attd. centers

A QUICK COUNT IN THE 1992-1993 "DIRECTORY OF MONTANA SCHOOLS" INDICATES THERE ARE 108 NONPUBLIC SCHOOLS OPERATING IN MONTANA, FROM WHICH WE NEED TO SUBTRACT THE 17 HUTTERITE SCHOOLS ACCOUNTED FOR ABOVE - LEAVING A TOTAL OF 91.

\$ 41,796 X 91 = 3,803,436 (conservative because some of these schools are sec. schools)

THERE ARE 997 HOME SCHOOLS REPORTED IN THE CURRENT DIRECTORY. CAN WE ASSUME ONE-FOURTH MIGHT BECOME CENTERS? ABOUT 250?

\$ 41,796 X 250 = \$ 10,449,000 Potential home school costs  
3,803,436 potential other nonpublic  
1,797,232 actual & potential Hutterite  
16,043,668 total potential cost

SENATE EDUCATION  
EXHIBIT NO. 2

DATE 3/3/93

BILL NO. AB 210

## Written Testimony

- HB 210
- Senate Education  
Committee Hearing
- March 3, 1993

Mr. Chairman, members of the Senate Education Committee.

I am Jack Copps, Deputy State Superintendent of Public Instruction.

That which follows is testimony in OPPOSITION TO HB 210.

HB 210 can be easily understood by examining its three components.

- It defines attendance centers (page 3, lines 18 through 21) as "a LOCATION (my emphasis)....where students are provided an instructional program...."
- It requires that the ANB of an attendance center that is a "COMPONENT" (my emphasis) of an existing school be "*aggregated*" with the ANB of the school (page 9, lines 12 through 16.)
- It limits the location of an attendance center by stating that "a school attendance center MUST (my emphasis) be located within the boundaries of THE school district that established the center (page 3, lines 21 through 23).

The first two components cause no concern. They reflect current practice. Attendance centers have always been viewed as a "a location....where students are provided an instructional program...." Which simply means that EVERY SCHOOL and related instructional facility in Montana is an Attendance Center. **Note:** Not counting all related facilities, there are more than 900 schools in Montana. The second component, like the first, describes past practice. Without exception, "the ANB of any school attendance that is a component of a school for the purposes of accreditation" has been "aggregated with the ANB of the school." I know of no one who is concerned with the first two components.

COMPONENT THREE, on the other hand, changes past practice. HB 210 states:

A school attendance center must be located within the boundaries of the school district that establishes the center.

Which simply means that NO school district in the State of Montana can provide an "instructional program" within the territory of another school district EVEN WHERE BOTH DISTRICTS AGREE, even where an interlocal agreement (7-11-105, MCA) exists, signed by BOTH DISTRICTS and properly filed with the Secretary of State.

Why would anyone, let alone the sponsor, want to place such restrictions on local school districts? Because one school district might, without permission, "invade" another district's territory? Can't happen! Without mutual agreement, the "invading" school district would not be eligible for foundation program dollars. **Why then....?** Because it is commonly accepted that districts should not interact? Because it is commonly accepted that districts should not enjoin themselves to determine what is in the best interest of both districts? Absolutely not. In fact, school districts in Montana and across this country have been pressured recently to do just the opposite. And the results have been positive. School districts have come together to draft transportation agreements, allowing one district to pick up children in another district's territory; school districts have formed consortiums to develop both curriculum and assessment instruments, and; school districts have formed many cooperatives to provide a more efficient special education delivery system. So why is HB210 before us, telling school districts they can no longer agree to establishing instructional programs in others' territory? The answer is clear. HB210 is intended to eliminate present and prevent future interlocal agreements which establish attendance centers for HUTTERITE CHILDREN. Yet, all public school districts are potentially impacted because the sponsor has chosen not to mention the Hutterites by name

For HB 210 to accomplish what its sponsor intends, subsection (13), page 3, lines 21 through 23, should read:

**A school attendance center established on a Hutterite Colony must be located within the boundaries of the school district that establishes the center.**

I think it is obvious why the sponsor chose not to mention the Hutterites by name, yet there is little doubt about his intent. It begins to surface in a letter Representative Peck wrote to a "Mr. Hofer," an administrator for a Hutterite Colony. In that letter dated February 1993, Representative Peck justified HB 210 by stating, "...I have taken an oath to uphold the Federal and State of Montana Constitution--and I am of the strong opinion that both prohibit aid, both direct and indirect, to sectarian schools." This quote coupled with a news summary of Representative Peck's comments before the House Education Committee, makes it clear that the sponsor's focus is the Hutterite population, not the population that resides in the remaining 506 public school districts in Montana. The news article, by-lined by Jim Crane, former publisher for the *Helena Independent Record*, reported Representative Peck's comments as follows:

*"Peck said he admires and respects Hutterites, but he thinks that using public funds to support their schools violates the constitutional requirement of the separation of church and state. Hutterites have religious beliefs which Peck said interfere with school boards' operation of colony schools."*

If, indeed, the purpose of this legislation is to restrict the growing number of attendance centers at Hutterite colonies, two important questions come to mind: 1) Are existing public school attendance centers at Hutterite Colonies illegal? and, 2) is there evidence of a conflict of church and state at existing public school Hutterite attendance centers? The answer for the first question comes from two Attorney General's Opinions. The first opinion, AG Opinion No. 5, Volume No. 36, addresses the following question:

*"Whether an elementary school district composed entirely of property belonging to the North Harlem Hutterite Colony would be eligible to receive public monies for school purposes without violating Article X, Section 6, Montana Constitution (1972)"*



Article X, Section 6, Montana Constitution (1972) provides that the legislature and school districts shall not make any appropriation for any sectarian purpose. The Attorney General's opinion left no doubt.

"An elementary school district composed entirely of property belonging to the North Harlem Hutterite Colony would be eligible to receive public monies for school purposes without violating any provision of the 1972 Montana Constitution."

-Robert L. Woodahl  
Attorney General

The second Attorney General's Opinion dated four years later, AG Opinion No. 26, Volume 38, addressed "attendance units" established on a Hutterite Colony. In that opinion former Attorney General Mike Greely held:

"A school district board of trustees may establish a separate attendance unit on the premise of a Hutterite Colony located in the district."

These two Attorney Generals' opinions gave legal legitimacy to public education on Hutterite property. Thus, more attendance centers were established at colony sites. The following facts about existing attendance centers on Hutterite property are taken from an attachment to this testimony.

**Facts:**

1. There are 40 Hutterite Colonies in Montana.
2. Eight (8) Colonies have coterminous boundaries with public school districts.
3. There are 26 attendance centers located on Hutterite property.
4. Nineteen (19) of the 26 attendance centers are "schools" per 20-6-502, MCA.
5. Seven (7) of the 26 attendance centers are classroom unit(s) (components, extensions of existing "schools").

6. Two (2) of the classroom unit(s) were established by their respective school districts.
7. Five (5) of the classroom unit(s) were established by interlocal agreements between two school districts with the attendance center(s), classroom unit(s), being operated by a neighboring school district.

**Question No. 2 is important.** Is there evidence of a conflict of church and state at any public school Hutterite attendance center? The answer is **NO**. The State Superintendent of Public Instruction has **NO** information that sectarian tenets are being advocated at any Colony-located attendance center. Is there potential? Certainly. There is potential at any public educational institution. Yet potential is not justification to prevent the establishment of any attendance center. Can you imagine how many public schools in America's early history would not exist if church-state conflict potential would have been cause for non-establishment? Attorney General Mike Greely summarized it well when he stated, "....both the school board and the Colony have an interest in assuring that school-age Hutterite children are given the opportunity to receive a basic secular education. Where the interests of the state and religion incidentally coincide accommodation is not precluded on constitutional grounds unless the state thereby becomes excessively entangled in the affairs of religion."

During the House Education Hearing, Representative Peck expressed concern with the cost (ANB) of opening additional Hutterite Colony-located attendance centers. It purported an idea that no student currently attending a private school should be given the opportunity to attend a public school because the state couldn't afford it!

Representative Peck also suggested in previous testimony that the Office of Public Instruction on "very questionable authority" has allowed certain attendance centers to be created. I know of **NO** legal authority who agrees with Representative Peck; I know of several who find no fault with what the Office of Public Instruction has done. Representative Peck also questioned the legal correctness of several Interlocal Agreements signed by participating districts. As a matter of record, those agreements were drafted with legal advice. Sample agreements providing that advice are attached.

Finally, I would like to close by quoting from an editorial which appeared in the Choteau newspaper.

"The issue of providing public education to a distinctly different religious and cultural group, such as the colonies, is rife with overtures of prejudice, myths about the culture itself and its business practices and jealousies over the colonies' successful operations.

On the counterpoint, the attendance center issue has also raised the awareness of the benefits of public education as colonies have admitted that offering private schools often with non-certified teachers and out-of-date textbooks has not provided their children with the best possible education.

While the relative merits and drawbacks of attendance centers are debated--as they will be again when the agreements for Miller, New Rockport and Rockport expire and come up for renegotiation--sight should not be lost of the children who will be the primary beneficiaries of extended public education.

And future debates should focus on the financial ramifications and feasibility of offering attendance centers, not on the cultural differences that separate the colonies and other school district residents. Those cultural differences should be accepted and respected, not wielded against the Hutterite people."

Mr. Chairman, members of the committee, the Superintendent of Public Instruction urges a "do not pass" vote on HB 210.

3-3-93  
HB-210

02-Mar-93

# Hutterite Colonies in Montana

Colony	County	Attendance Center at Colony?	Attendance Center Status	Attendance Enrollment 10/01/92	Established by Interlocal Agreements
Forty Mile	Big Horn	No			
North Harlem (D)	Blaine	Yes	School	9	
North Harlem Colony Elem #6					
Cascade	Cascade	Yes	School	13	
Fairhaven	Cascade	Yes	School	31	
Pleasant Valley	Cascade	Yes	School	22	
Big Stone	Cascade	Yes	School	24	
King (D)	Fergus	Yes	School	6	
King Colony Elem #40					
Ayers (D)	Fergus	Yes	School	8	
Ayers Elem Dist #222					
Spring Creek (D)	Fergus	Yes	School	5	
Spring Creek Colony Elem #104					
Fords Creek	Fergus	No			
Deerfield	Fergus	No			
Glacier	Glacier	Yes	School	13	
Seville (D)	Glacier	Yes	School	23	
Mountain View Elem Dist #64					
Glendale	Glacier	Yes	School	12	
Big Sky	Glacier	Yes	School	22	
Golden Valley	Golden Valley	Yes	Classroom Unit(s)	21	X
Hilldale	Hill	No			
Gildford (D)	Hill	Yes	School	9	
Gildford Colony Elem #89					
East End	Hill	No			
Surprise Creek	Judith Basin	Yes	School	14	
Millford (D)	Lewis and Clark	Yes	School	22	
Auchard Creek Elem #27					
Riverview	Liberty	Yes	Classroom Unit(s)	22	X
Sage Creek	Liberty	Yes	Classroom Unit(s)	23	X
Eagle Creek (D)	Liberty	Yes	School	12	57 students when Riverview and Sa Creek classroom units are added.
Liberty Elem Dist #10					
Springdale	Meagher	No			
Flat Willow	Musselshell	No			
Malta	Phillips	No			
Loring	Phillips	Yes	School	8	
Miami (D)	Pondera	Yes	School		
Kingsbury	Pondera	Yes	School	29	
Birch Creek	Pondera	No			
Miller	Teton	Yes	Classroom Unit(s)	22	X
New Rockport	Teton	Yes	Classroom Unit(s)	19	X
Rockport	Teton	Yes	Classroom Unit(s)	22	
Rimrock	Toole	Yes	Classroom Unit(s)	12	
Hillside	Toole	Yes	School	13	
Martinsdale	Wheatland	No			
Duncan Ranch	Wheatland	No			
Springwater	Wheatland	No			

D: School District and colony have coterminous boundaries.

School: Opened per 20-6-502.

Classroom Units: Extension of existing school. Separate facility, not physically connected to main school facility.

Note: Interlocal Agreements (7-11-104) REQUIRE mutual consent of participating districts.

## Interlocal Agreements Establishing Attendance Centers at Hutterite Colonies

<u>Colony</u>	<u>County</u>	<u>Parties to Interlocal Agreement</u>
1. Golden Valley	Golden Valley	*Lavina Elementary District #41M and Ryegate Elementary District #6
2. Riverview	Liberty	*Liberty Elementary District #10 and Chester Elementary District #33
3. Sage Creek	Liberty	*Liberty Elementary District #10 and Chester Elementary District #33
4. Miller	Teton	*Bynum Elementary District #12 and Choteau Elementary District #1
5. New Rockport	Teton	*Golden Ridge Elem. District #45 and Choteau Elementary District #1

These five (5) elementary attendance centers (107 students)  
would be closed if HB 210 passes.

\*District operating the attendance center.

# (sample) AGREEMENT

(For an Attendance Center which is an extension  
of an existing school)

This Agreement is entered into by and between Sample Elementary and Sample Colony for the establishment of an Extension Attendance Center and provides as follows:

1. An Extension Attendance Center shall be established at Sample Colony for the period of month/day/year through month/day/year.
2. The Center shall be established by authority of the Sample Elementary District's Board of Trustees as an extension of Sample Elementary School for the purpose of offering instruction in Sample Grades inclusive (i.e., K-6).
3. The Attendance Center shall be operated in accordance with any and all laws and administrative rules applicable to Sample Elementary District and Sample Elementary School, including but not limited to the following:
  - a. Teachers will hold required certification and be employed, supervised and paid entirely by the District.
  - b. The Attendance Center will comply with all accreditation standards applicable to Sample Elementary School which may include the application for an alternative standard.
  - c. The curriculum offered shall be that which is commonly offered by Sample Elementary School except as authorized by Sample District Board of Trustees.
  - d. Enrollment at the Attendance Center shall be open to any and all qualified residents of the district.
  - e. The Attendance Center will comply with all budgeting, accounting and financing statutes and rules.
  - f. The practice of religion is prohibited.

(sample)

4. The district and Sample Colony shall enter into an agreement for the rental of facilities which shall state the terms of rental fee, (i.e., dollar amount, maintenance responsibility, utility responsibility), terms of use, specific daily hours of use for school purposes and terms for compliance with all safety and building codes for public schools.

Date: \_\_\_\_\_

School District No. \_\_\_\_\_

By: \_\_\_\_\_

Chair, Board of Trustees

Date: \_\_\_\_\_

By: \_\_\_\_\_

Representative, Sample  
Colony

Senate Education

Exhibit #3

3-3-93

Exhibit #3 is a packet of testimony by Lowell Knowlen, Billings, concerning House Bill No. 210. Mr. Knowlen was representing the Montana Hutterite Colonies. The originals are stored at the Historical Society at 225 North Roberts Street, Helena, MT 59620-1201. The phone number is 444-2694.



ATTENDANCE CENTERS AFFECTED BY HB 210

<u>COLONY</u>	<u>HOST SCHOOL</u>	<u>RESIDENT DISTRICT</u>
GOLDEN VALLEY	LAVINA	RYEGATE
MILLER	BYNUM	CHOTEAU
NEW ROCKPORT	GOLDEN RIDGE	CHOTEAU
RIVERVIEW	EAGLE CREEK	CHESTER
SAGE CREEK	EAGLE CREEK	CHESTER

Senate Education

3-3-93

Exhibit #7

HB 210

Exhibit #7 is a packet of pictures presented by Gwyn Anderson, Teton County Superintendent of schools. The pictures concerned classroom size. The originals are stored at the Historical Society at 225 North Roberts Street, Helena, MT 59620-1201. The phone number is 444-2694.

Senate Education

3-3-93

Exhibit #8

Exhibit #8 is a packet of information presented as rebuttal testimony to House Bill No. 210 by Mr. Eli Hofer. The originals are stored at the Historical Society at 225 North Roberts Street, Helena, MT 59620-1201. The phone number is 444-2694.

Being from Kalispell where we rarely see Hutterites, I was very nervous to start a job in one of the colonies. I had heard stories and rumors about these people and I did not quite know what to expect. However, I was surprised and relieved to find out that these people so different from us in some ways and are yet so like us in so many. I believe their kids have the right to a public education just like any one of us.

I teach grades K-8 at New Rockport Colony. I have 19 students. Before I arrived at the school there is evidence that these students were having only five subjects taught to them. These were math, spelling, reading, music and handwriting. Since the attendance center has been established science, social studies, P.E., health and art have been added to the curriculum. These are all subjects that these students need in order to help them develop academically.

My students are very enthusiastic and excited about everything. They are eager to learn not only the basics but also all the new subjects that have been added. Their attitudes are unbelievable. Along with being so eager I have very few discipline problems which gives the kids even more of a chance to learn.

Not only are the students' attitudes great, I have seen only a positive attitude among the parents and the others on the colony. They are willing to help out with anything and have been open to all the new things that are happening in the school.

In the past two months that I have been at the colony, I have found that there are no problems at all with my host district being about 45 miles away. Char Tacke, my supervising teacher and I keep in close contact through the phone and she comes to visit our school one afternoon a week. If I have a problem at any time she is always available to talk to. I also have the advantage that all of the students parents are right there and available within a moments notice if something major were to happen.

Why should we give these kids a public education? There are many reasons. The two main reasons that I see are the fact that the Hutterites do pay taxes just like any of the rest of us. The other main reason is that these people deal with our community in a great many ways. One way is through their farming and the sale of their products into our community. This is a great boost to our economy. I feel that in the future the kids will be taking over this operation and that a public education will help them in dealing with the community much more effectively.

In conclusion, I believe that if a district wishes to help one of the colonies with their education than this should be their right. If the colony's district does not want to take the time and make the effort than let another district do it. We need to give these Hutterite children an education they deserve and this is through our attendance centers and a district willing to make it happen.

*Jill M. Sideru*

SENATE EDUCATION  
EXHIBIT NO. 9  
DATE 8-3-93  
FILE NO. 46 210

Committee Members, I appreciate the time you have allowed me to speak today. I am here to speak against House Bill 210 regarding attendance centers. As an educator in rural Montana schools for the past ten years it is my feeling that this bill denies the students of Montana the right to an equal education as guaranteed by the Constitution of the United States. I agree that these students should be an attendance center of the district that is closest to them, but when that district refuses to meet these students needs, that is a violation of their Constitutional Rights. Therefore the parents or guardians of these students should be able to seek the best possible means for their children's education, as is the right of all parents.

House Bill 210 would force a school district to provide services for children for which they have no real concern. By letting the Hutterite Colonies and schools out of their districts reach a mutual agreement, we are meeting the needs of the Hutterite children and affording the host school the opportunity to improve the educational services to all of its students.

Montana is a rural state, just because a school may be located closer to a Hutterite Colony than the colony's host school, does not make for less than ideal conditions. As Supervising Teacher of School District #45 of Teton county I travel fifteen miles in order to teach at a Kindergarten through sixth grade rural elementary school. I was also asked to supervise the Hutterite Colony which is located twenty-nine miles from my home, the extra distance traveled seems of little significance since many other educators travel much farther for their daily teaching assignments. The colony of which we became a host school for had employed a teacher who taught four subjects a day for six hours a day. The students in the colony are now afforded the opportunity to have a certified teacher who teaches seven subjects a day. The colony also was willing to update its school facility to help their students meet the world's changing needs.

I urge you, please vote against House Bill 210 and allow parents their Constitutional Right.

*Charlotte K. Jacke*

SENATE EDUCATION

EXHIBIT NO. 10

DATE 3-3-93

BILL NO. HB 210

Richard W. Cameron, Superintendent  
Lavina Public Schools  
Box 146  
Lavina, MT 59046

SENATE EDUCATION  
EXHIBIT NO. 11  
DATE 3-3-93  
BILL NO. HB 210

Testimony given on HB 210 to the Senate Education Committee  
March 3, 1993

I appreciate the opportunity to testify against HB 210. This proposed legislation will interfere with the ability of school districts to enter into inter-local agreements that those districts wish to have. It is an attack on local control no matter what the backers say. It stops you from doing something that is your choice.

We can have long winded philosophical debates on having attendance centers at Hutterite colonies. These debates do not help the students involved. I'm asking you to think first of the students. The best way to provide them with the education they deserve is with the attendance centers. at this time in our society we are encouraging minorities to take pride in cultural differences. We are multi-cultural. We take steps to accommodate these cultural differences and appreciate them. But not this cultural difference? No matter how you rationalize it, this will send a message to this minority group. And not a very favorable one. Imagine what impression the passage of this legislation will give a young Hutterite child in an attendance center. This year you have a public school, but next year you don't have one. What reason can you give the child; will you say no school because of a some legalism?

The Lavina Elementary School District 41M of Golden Valley County is currently operating the attendance center at the Golden Valley Colony. The colony is located in Ryegate's School District. All the parties to the agreement are happy with it. Now the backers of this legislation say they know more than the local school boards and that we should not do this. Let me assure you, the backers of this legislation have not consulted any of us on this issue. They have not visited the attendance center, they have not asked us for copies of our inter-local agreements or contracts, and they have not made any contact with any of the authorities involved. No one from the Lavina Public Schools has been approached by Representative Peck. Since this legislation will only affect a handful of attendance centers in the state, I find this just a bit curious. By no stretch of the imagination has this bill been well researched and thought out. It is the kind of legislation that can lead to bad feelings and possible legal challenges.

Please consider the students first. Any argument that this legislation will have a positive help on the students involved is false rationalization of the worst order. We are helping some kids that need that help. Listen to them and do the right thing. Killing this bill will be a favor to kids, passing it will hurt them.

Thank you.

SENATE EDUCATION  
EXHIBIT NO. 12  
DATE 3-3-93  
BILL NO. HB 210

TO: Members of Senate Education and Cultural Resources Committee  
FROM: Jacob Wipf, President of Miller Colony, Choteau, Montana  
RE: House Bill 210  
DATE: March 3, 1993

Mr. Chairman and Senators of the committee, I am Jacob P. Wipf, President of the Miller Colony, Choteau, Montana and I appreciate the chance to voice my opposition to House Bill 210.

Although the word "Hutterite" is not mentioned in House Bill 210 there can be no doubt in anyone's mind who understands the intent of this bill that it will deny the children of a minority group the right to a public education.

It has been mentioned by Mr. Peck that if the Hutterites are allowed to have public schools then other parochial or private schools would follow suit and do the same. If other religious denominations or private schools would do what we have done, they would rightly be entitled to the same privilege.

In the anticipation that School District #1 in Choteau, our home district, would sponsor an attendance center at our colony, we built a new three classroom school with a central library and special education and teacher workrooms. The building was built according to state building code specifications at the cost of approximately \$100,000 for building materials only, as we built it ourselves with colony labor. The school building has passed all state building code inspections, electrical and plumbing, and has also been inspected and passed by the state fire marshal. To keep costs down we purchased used school desks from School District #1, which they were ready to discard. A lot of labor went into repairing them, our women spent days removing the old paint and varnish and refinishing them until they were like new. We also installed chalk boards, bulletin boards, a photocopier, teacher's desks, central library shelving and classroom fixtures. The colony also furnishes a telephone at our expense for the teacher's school related business use. All utilities, janitorial work and bathroom supplies are also furnished by the colony.

We, at the Miller Colony have completely given up the right to run our own school, by putting our children in the hands of the public school system under the direction of the local school board. We have no more say in how the school is run than any other parents with children in public schools who exercise their constitutional rights.

I can truthfully say that no religion is taught in our school and never was, even at the time when it was private. So how could this violate the principal (or first amendment) of not mixing church and state.

Other non-Hutterite children are free to attend the Attendance Center at our colony if they wish, because it is just that, a public school.

The offensive thing in this dispute over Attendance Centers seems to be that Hutterite children have the privilege to attend a public school near their homes and some would have you believe that it is not right or in fact may be illegal. Mainly because the children are all are of the same religious denomination.

How many children in town, who have the same privilege of living within walking distance of the schools they attend are asked to reveal their religious status?

Living close to a school has the added advantage of saving transportation expenses.

The Hutterite lifestyle is unique in some respects, but as far as education is concerned, the fact that the Hutterite parents and their children are living close together is no different than that of other people who make their livelihood in rural settings, but elect to live in town with their families and have their children go to nearby schools.

The point I am trying to make is that if the 25 families of the Miller Colony were non-Hutterite, but happened to be of the same religious denomination, and were spread out over the colonies land holdings, which lies in an area of approximately 25 miles in length, and the children were bused to one central location, no doubt the opponents of Attendance Centers would have no problem with this even though there would be the added expense of transportation.

This was in fact very often the case when this country was settled. Certain immigrant groups settle in a contiguous area because of national, cultural, religious, and language ties. No one dreamed of saying that their children were not entitled to a public education even though they were often of the same denomination. Now all of the sudden this is the wrong thing to do, and as some interpret it, a violation of the first amendment.

It has been pointed out that in 3 parallel situations, some as long standing as 50 years, that Hutterite children have been and still are being educated in public schools in Montana on the colony premises. Now how can the Honorable Representative Peck and the majority of the House of Representatives say that out of respect for the Hutterite people, the children of 5 colonies will be singled out and denied a public education, and believe that this is right, just and fair, and that it would not hurt the children and



the parents involved.

Why are children all over the state allowed to attend school in the district of their parents choice, outside of their home districts, if they are non-Hutterite. And yet House Bill 210 will legislate this privilege away from Hutterite children only.

School buildings and their location do not in themselves provide an environment best suited to the educational needs of children. Parents see certain school situations to be detrimental for that purpose. That is why many people enroll their children in other public schools outside their home districts. Why should 5 colonies' parents and their children be denied this same privilege?

Thank you Mr. Chairman and member Senators of this committee for giving me a chance to unburden my heart. I urge and entreat you to help defeat House Bill 210.

Thank you for allowing me to come and speak to you today. My name is Stacy Hyatt and I am speaking in opposition to House Bill 210.

I am a seven year veteran of the teaching profession. All of my experience outside of this year has been in the traditional public setting. I am currently a teacher at Miller Colony School in Choteau.

I am here because I firmly believe that many people have been misinformed about the curriculum being taught at attendance centers.

As an experienced teacher, I am well aware of the curriculum mandated by the state of Montana. I have gained further experience in this area of curriculum after serving as a member of the Northeastern Montana Curriculum Consortium, where I spent two years developing and writing curriculum for social studies which was in accordance to the state mandates.

Some people are laboring under the misconception that the material being taught in attendance centers does not follow the state guidelines. I can attest to the fact that the material in my classroom falls within these guidelines.

I do not feel that I alter my curriculum in anyway to suit the religious or cultural backgrounds of my students. I do believe however that as a teacher in a public school I have a responsibility to approach subjects that are controversial in a sensitive manner. By doing so it <sup>becomes</sup> unnecessary to avoid teaching controversial matter.

I see the positive impact that public school is having upon my students. They are growing and developing in many aspects. I am asking you to please consider the tremendous impact the passage of House Bill 210 will have on them. Ultimately it will be the students <sup>who</sup> will suffer the biggest loss with the passage of this bill.

3-3-93

HB-210

To close I'd like to pass along some comments made by my students about public school. Each of these <sup>comments</sup> is a direct quote. An eighth grader states "I have learned more this year than I have in any other year in school." Another student says "Public schools are also good for learning more, if there is a child that has problems you can get help for him or her." A 6<sup>th</sup> grader states "You get new books that you like to learn from."

The last comment made by one of my students sums up the feelings of all the students. I quote "I hope that we don't lose the public school so we can learn more."

MONTANA RURAL EDUCATION ASSOCIATION

P.O. BOX 5418  
HELENA, MONTANA 59604  
(406) 442-8813  
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SENATE COMMITTEE ON

EXHIBIT NO. 14

DATE 3-3-93

BILL NO. HB 810

TESTIMONY ON HOUSE BILL 210

Don Waldron, Lobbyist

The Montana Rural Education Association is opposed to House Bill 210 for a number of reasons. The major objection is in the wording on page three, lines 18 through 23, which serves to nullify all interlocal agreements in existence now and in the future. The secondary objection is that the bill, on page nine, lines 11 through 15, seems to limit a number of our present schools (school meaning an attendance unit for children) ability to collect foundation program in the manner we have always calculated ANB.

Interlocal Agreements, these agreements were designed to cover a lot of special educational services (basic to special). In essence about anything that could better serve students was allowed if it was agreed upon between two or more school districts. These agreements had to meet strict state requirements, review by the Attorney General and then filed with the Secretary of State's Office.

In many cases these agreements are made between districts to find a way to better serve a smaller attendance unit. If you plan to give this bill a do pass, we would urge an amendment on page three, line 22, adding after district,

"except as to interlocal agreements agreed to by two or more adjacent school districts."

A school district like Columbia Falls Elementary could lose foundation program money if the new wording on page nine, lines 11 through 15, is interpreted to mean all schools outside of Columbia Falls were to aggregate their ANB. Hungry Horse attendance unit is a school that is presently counted as a separate ANB since it is three miles out of Columbia Falls. With the wording in this bill a legal opinion could very well say that this aggregated ANB section applies to Hungry Horse School.

Why would schools in the Flathead ever consolidate if this ANB aggregation was passed for schools three miles outside the city limits?

The definition of a "school" and an "attendance unit" are one and the same, as far as I can see in school law and reading court opinions. An attendance center is not specifically defined, but one can only assume that "attendance center" and "attendance unit" would be the same. For this reason alone I feel we have a flawed bill in House Bill 210.

Let's take a look at interlocal agreements (Section 7-11-104, MCA) and we will find why schools use this instrument to perform services. A copy of the statute is attached. The law reads, "Such control shall be authorized and approved by the governing body to each party to said contract." My question is - Did anyone hold a gun to the

heads of these people that signed these agreements?

We know other people will or have covered the question of the Hutterite Colonies. We represent five school districts that happen to be Hutterite Colonies. As far as we are concerned these school districts are no different than the other 145 we represent.

Again, we do not see the need for House Bill 210. If there is a problem it should be spelled out and approached in the proper way. We can only live with this bill if it is amended to exempt interlocal agreements and some definition of what units must aggregate their ANB. An amendment for clarification might be the best approach.

With all the problems we see with House Bill 210, we would recommend a do not pass.

ATTACHMENTS

1. Section 7-11-104, MCA
2. List of Interlocal Agreements of Hutterite Colonies
3. Interlocal Agreement Between Liberty District #10  
and Chester District #33
4. Attendance Center Agreement - Sage Creek and  
Elementary District #10

## Part 1

## Interlocal Agreements

## Part Cross-References

Intergovernmental cooperation, Art. XI, sec. 7, Mont. Const. Contracts for detention center services, 7-32-2243.

**7-11-101. Short title.** This part shall be known and cited as the "Interlocal Cooperation Act".

**History:** En. Sec. 2, Ch. 82, L. 1967; R.C.M. 1947, 16-4902.

**7-11-102. Purpose.** It is the purpose of this part to permit local governmental units to make the most efficient use of their powers by enabling them to cooperate with other local governmental units on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities.

**History:** En. Sec. 1, Ch. 82, L. 1967; R.C.M. 1947, 16-4901.

**7-11-103. Definition.** For the purposes of this part, the term "public agency" shall mean any political subdivision, including municipalities, counties, school districts, and any agency or department of the state of Montana.

**History:** En. Sec. 3, Ch. 82, L. 1967; R.C.M. 1947, 16-4903.

**7-11-104. Authorization to create interlocal agreements.** Any one or more public agencies may contract with any one or more other public agencies to perform any administrative service, activity, or undertaking which any of said public agencies entering into the contract is authorized by law to perform. Such contract shall be authorized and approved by the governing body of each party to said contract. Such contract shall set forth fully the purposes, powers, rights, obligations, and responsibilities of the contracting parties.

**History:** En. Sec. 4, Ch. 82, L. 1967; R.C.M. 1947, 16-4904(part).

**7-11-105. Detailed contents of interlocal agreements.** The contract authorized by 7-11-104 shall specify the following:

- (1) its duration;
- (2) the precise organization, composition, and nature of any separate legal entity created thereby;
- (3) the purpose or purposes of said interlocal contract;
- (4) the manner of financing the joint or cooperative undertaking and establishing and maintaining a budget therefor;
- (5) the permissible method or methods to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination;
- (6) provision for an administrator or a joint board responsible for administering the joint cooperative undertaking and for the health and welfare of the community.

(7) the manner of acquiring, holding, and disposing of real and personal property used in the joint or cooperative undertaking;

(8) any other necessary and proper matters.

**History:** En. Sec. 4, Ch. 82, L. 1967; R.C.M. 1947, 16-4904(1) thru (8).

**7-11-106. Repealed.** Sec. 2, Ch. 83, L. 1991.

**History:** En. Sec. 4, Ch. 82, L. 1967; R.C.M. 1947, 16-4904(9).

**7-11-107. Filing of interlocal agreement.** The interlocal contract made pursuant to this part must be filed with:

- (1) the county clerk and recorder of the county or counties where the political agencies are situated; and
- (2) the secretary of state.

**History:** En. Sec. 4, Ch. 82, L. 1967; R.C.M. 1947, 16-4904(10); amd. Sec. 1, Ch. 83, L. 1991.

## Compiler's Comments

prior to commencement of performance; and made minor changes in style.

**1991 Amendment:** At beginning deleted requirements that interlocal agreements be approved by Attorney General and be filed

**7-11-108. Authorization to appropriate funds for purpose of interlocal agreement.** Any public agency entering into an interlocal contract pursuant to this part may appropriate funds for and may sell, lease, or otherwise give or supply to the administrative board created for the purpose of performance of said contract and may provide such personnel or services therefor as may be within its legal power to furnish.

**History:** En. Sec. 4, Ch. 82, L. 1967; R.C.M. 1947, 16-4904(11).

## Part 2

## Interlocal Cooperation Commission

**7-11-201. Statement of policy.** It is hereby declared to be the public policy of Montana to provide for the residents of the state the means of improving their local governments so that essential services can be provided more effectively and economically. The growth of urban population, the necessity to maintain local governmental services in areas of increasing population on one hand and in areas of decreasing population on the other, and the movement of people into suburban areas have created varied problems in the provision of public services and facilities which often cannot be met adequately by individual units of local government.

**History:** En. Sec. 1, Ch. 129, L. 1969; R.C.M. 1947, 11-4401(1).

**7-11-202. Purpose.** It is the purpose of this part to provide a method whereby the residents of local areas in Montana may propose local solutions to the common problems referred to in 7-11-201 in order that proper growth of the level of government may be assured and the health and welfare of the community be maintained.



## Part 1

## Interlocal Agreements

## Part Cross-References

Intergovernmental cooperation, Art. XI,  
sec. 7, Mont. Const.

Contracts for detention center services,  
7-32-2243.

**7-11-101. Short title.** This part shall be known and cited as the "Interlocal Cooperation Act".

History: En. Sec. 2, Ch. 82, L. 1967; R.C.M. 1947, 16-4902.

**7-11-102. Purpose.** It is the purpose of this part to permit local governmental units to make the most efficient use of their powers by enabling them to cooperate with other local governmental units on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities.

History: En. Sec. 1, Ch. 82, L. 1967; R.C.M. 1947, 16-4901.

**7-11-103. Definition.** For the purposes of this part, the term "public agency" shall mean any political subdivision, including municipalities, counties, school districts, and any agency or department of the state of Montana.

History: En. Sec. 3, Ch. 82, L. 1967; R.C.M. 1947, 16-4903.

**7-11-104. Authorization to create interlocal agreements.** Any one or more public agencies may contract with any one or more other public agencies to perform any administrative service, activity, or undertaking which any of said public agencies entering into the contract is authorized by law to perform. Such contract shall be authorized and approved by the governing body of each party to said contract. Such contract shall set forth fully the purposes, powers, rights, obligations, and responsibilities of the contracting parties.

History: En. Sec. 4, Ch. 82, L. 1967; R.C.M. 1947, 16-4904(part).

**7-11-105. Detailed contents of interlocal agreements.** The contract authorized by 7-11-104 shall specify the following:

- (1) its duration;
- (2) the precise organization, composition, and nature of any separate legal entity created thereby;
- (3) the purpose or purposes of said interlocal contract;
- (4) the manner of financing the joint or cooperative undertaking and establishing and maintaining a budget therefor;
- (5) the permissible method or methods to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination;
- (6) provision for an administrator or a joint board responsible for administering the joint or cooperative undertaking, including representation of

- (7) the manner of acquiring, holding, and disposing of real and personal property used in the joint or cooperative undertaking;
  - (8) any other necessary and proper matters.
- History: En. Sec. 4, Ch. 82, L. 1967; R.C.M. 1947, 16-4904(1) thru (8).

**7-11-106. Repealed.** Sec. 2, Ch. 83, L. 1991.

History: En. Sec. 4, Ch. 82, L. 1967; R.C.M. 1947, 16-4904(9).

**7-11-107. Filing of interlocal agreement.** The interlocal contract made pursuant to this part must be filed with:

- (1) the county clerk and recorder of the county or counties where the political agencies are situated; and
- (2) the secretary of state.

History: En. Sec. 4, Ch. 82, L. 1967; R.C.M. 1947, 16-4904(10); amd. Sec. 1, Ch. 83, L. 1991.

## Compiler's Comments

*1991 Amendment:* At beginning deleted requirements that interlocal agreements be approved by Attorney General and be filed

prior to commencement of performance; and made minor changes in style.

**7-11-108. Authorization to appropriate funds for purpose of interlocal agreement.** Any public agency entering into an interlocal contract pursuant to this part may appropriate funds for and may sell, lease, or otherwise give or supply to the administrative board created for the purpose of performance of said contract and may provide such personnel or services therefor as may be within its legal power to furnish.

History: En. Sec. 4, Ch. 82, L. 1967; R.C.M. 1947, 16-4904(11).

## Part 2

## Interlocal Cooperation Commission

**7-11-201. Statement of policy.** It is hereby declared to be the public policy of Montana to provide for the residents of the state the means of improving their local governments so that essential services can be provided more effectively and economically. The growth of urban population, the necessity to maintain local governmental services in areas of increasing population on one hand and in areas of decreasing population on the other, and the movement of people into suburban areas have created varied problems in the provision of public services and facilities which often cannot be met adequately by individual units of local government.

History: En. Sec. 1, Ch. 129, L. 1969; R.C.M. 1947, 11-4401(1).

**7-11-202. Purpose.** It is the purpose of this part to provide a method whereby the residents of local areas in Montana may propose local solutions to the common problems referred to in 7-11-201 in order that proper growth and development of the state may be assured and the health and welfare of

INTERLOCAL AGREEMENT

## Elementary School District No. 10 &amp; 33

This agreement is entered into by and between Elementary School District No. 10, Galata, MT and Elementary School District No. 33, Chester, MT for the establishment of public school attendance centers. The attendance centers shall be established and administered by School District No. 10 within the boundaries of School District No. 33 for the purpose of providing on-site educational services at the Riverview and Sage Creek Hutterite Colonies. The powers, rights and responsibilities of the contracting parties are contained in the following provisions:

- 1) There will be no financial obligation on the part of School District No. 33 to fund the establishment or the operation of the attendance centers.
- 2) School District No. 10 hereby agrees to waive tuition fees from School District No. 33 for students attending either attendance center.
- 3) School District No. 10 and 33 enter into this agreement with the understanding that school district boundaries will not change through this agreement. Should this agreement result in changes in boundaries for either district, the agreement shall be null and void.
- 4) School District No. 10 and 33 enter into this agreement with the understanding that taxable valuation and/or tax revenue will not be effected by this agreement. Should this agreement result in changes in taxable valuation or tax revenue (with the exception of foundation program monies as determined by the average number belonging), for either district, the agreement shall be null and void.
- 5) School District No. 33 hereby agrees that School District No. 10 will collect all foundation program monies for students enrolled at the attendance centers.
- 6) School District No. 10 hereby agrees that students at the Riverview and Sage Creek Colonies have the option of attending school at Chester Public Schools, located in Chester, MT or enrolling at the attendance centers. It is further understood that foundation program monies "follow the child".
- 7) School District No. 10 hereby agrees to allow any eligible students residing in School District No. 33 to enroll at the attendance centers.
- 8) School District No. 10 shall be totally responsible for the administration of the attendance centers including establishing and maintaining budgets according to the School Laws of Montana.

Exhibit #14

3-3-93

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- 9) Supervision of teaching and non-teaching personnel utilized at the attendance centers shall be solely the responsibility of School District No. 10 and the Liberty County Superintendent of Schools. School District No. 33 shall incur no liability due to the conduct of individuals utilized by School District No. 10 at the attendance centers. It is strongly recommended by School District No. 33 that the trustees of District No. 10 request school visitations by the Liberty County Superintendent on a monthly basis.
- 10) School District No. 10 shall be responsible for securing desks, textbooks, instructional equipment and all other supplies for the attendance centers.
- 11) All real and personal property used in this undertaking shall belong to School District No. 10 and the Riverview and Sage Creek Colonies. As such, the manner of acquiring, holding and disposing of such property shall be their concern.
- 12) It shall be the responsibility of School District No. 10 to ensure that the attendance centers are established and operate within the guidelines created by the Montana State Accreditation Standards and the School Laws of Montana.
- 13) School District No. 10 shall provide School District No. 33 with proof of insurance coverage. School District No. 10 shall list School District No. 33 as a named insured on liability and errors and omission policies.
- 14) District No. 10 hereby agrees to indemnify, defend and hold District No. 33 harmless from any and all claims from damages or losses which may arise from or be incident to the operation of the attendance centers.
- 15) This agreement shall be in full force and effect from August 15, 1992 through June 30, 1993. This agreement will be reviewed annually and must be approved by both parties prior to March 1 of any succeeding year, if the agreement is to continue for the next school year.

David HoferChairman, School District #10  
Board of Trustees

Date

8-12-92Leman A. StreetChairman, School District #33  
Board of Trustees

Date

8/12/92

Filed with Secretary of State 8-27-92

**Liberty Elementary School District No. 10**

Rural Route North • Galata, Montana 59444

## ATTENDANCE CENTER AGREEMENT/ RENTAL AGREEMENT/ TUITION AGREEMENT.

(As an Extension of Existing School)

A request by the Parents at the Sage Creek Hutterite Colony that Elem. Dist. #10 provide Educational Services ( Grades 1-8) at the Colony has been received by Elem. Dist. # 10 Board of Trustees, at their regular meeting held on June 11, 1992.

The Elementary Dist. #10 Board of Trustees approved this request unanimously. Contingent upon :

1. Successfully negotiating an Inter-Local Agreement between Elem. District #10 and Elem. Dist #33. ( Home District.)
2. Successfully negotiating a School Building Lease Agreement, between Elem. Dist No. 10 and the Sage Creek Colony.
3. Successfully negotiating a Tuition Agreement between Elem. No. 10 and the Parents at Sage Creek Colony.

an Inter- Local Agreement has now been negotiated and approved by both school boards .(effective date Aug.12-1992)

Copy of Inter-Local Agreement is attached.

Terms of Building Lease Agreement:

Sage Creek Colony hereby agrees to provide a Building suitable for school purposes at the Colony. This Building shall be used for Educational purposes during regularly scheduled school days.(as outlined on Elem. Dist. No. 10 adopted school calender for the 1992-93 school year, school calendar is attached). rental fee for the 1992-93 school year shall be -0- This fee shall be payable at the end of the 1992-93 school year.

Maintenance and utilities for the school Building will be provided for by the Sage Creek Colony.

Terms of Tuition Agreement:

The Elem. Dist. No. 10 Board of Trustees has determined that the parents of school Children may be assessed a Tuition fee. The Tuition Agreement shall be established under the provisions of 20-5-305 MCA. the tuition fee may not exceed \$139.75 per pupil for the 1992-93 school year. the tuition fee shall be paid under the Provisions of 20-5-303 MCA. The tuition payment shall be made May 1993. It is further understood that the Board of Trustees will analyze the fiscal situation by May 1993. After analyzing the fiscal situation

# **Liberty Elementary School District No. 10**

Rural Route North • Galata, Montana 59444

of the District, the Trustees reserve the right to collect the agreed upon Tuition fee, or may opt to waive all or part of tuition fee. (important clarification) Under no circumstances shall Dist. #33 be held responsible for tuition fee.

This agreement is also, subject to all Provisions and regulations of School Board Policy as it may apply to all students and employees.

Specific terms of this Agreement as described above and to follow are not intended to encumbrance either party or hinder the education of children, but to preserve their culture and heritage.

## Other points Clarified:

1 The Educational process shall be consistent with the State Accreditation Standards and coincide with District #10 School Program offerings.

2 For Special Educational Services, all Students will have the same privileges. Elem. Dist #10 is a member of the Bear Paw Special Education Coop. Therefore, Special Ed. needs are evaluated and handled with input and recommendations from trained professionals, from the Bear Paw Coop.

3 Hutterite children who graduate from the eighth (8) grade, will be required to enroll in a work/study program (correspondance courses) until age sixteen (16) This program will be supervised by the County Superintendent in Cooperation with the Sage Creek Colony school representative and the Dist. #10 Board of Trustees.

4 Elem. Dist. #10 Trustees will be responsible for hiring, evaluation and supervision of the Teacher(s) in cooperation with the Sage Creek Colony school representative and the County Supt. Dist #10 Trustees hope to arrange for monthly visits to the Attendance Centers by the County Supt.

5 The Teacher(s) will be entitled to all the rights and privileges as outlined in the Dist. #10 School Board Policy, and as per negotiations outline on contract for employment.

6 Housing for the Teacher(s) is a concern that will be handled by the Teacher(s) and the Sage Creek Colony.

7 Elem. Dist. #10 carries Liability coverage (Errors and Omission and regular Liability with deductibles.) In the event of Liability Claims against Elem. Dist. #10 originating at the Attendance Centers, the Sage Creek Colony agrees to be responsible for all Deductibles and other expenses not covered under the Liability Policies. It is also understood that Dist. #33 shall be held harmless in the event of Liability Claims.

**Liberty Elementary School District No. 10**

Rural Route North • Galata, Montana 59444

Exhibit #14

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8 The Liberty Elem. Dist # 10 Board of Trustees shall visit each site at least twice during the 1992-93 school term. The first visit shall be made 4-6 weeks after school starts.

9 This agreement shall be in effect for the 1992-93 school term which is from August 24 1992 to May 28 1993. (see attached school calendar.)

10 Attachments to this Agreements shall be the following documents.

- 1 Inter- Local Agreement
- 2 1992-93 school calendar.
- 3 Safety And asbestos Inspection documents.

11 Signatories of this Agreement shall be Elem.Dist.#10 Board Chairman and the Sage Creek Colony school representative.

David Hofer  
Chairman Board of Trustees Elem.Dist #10

8-13-'92  
Date

Peter D Hofer  
School Representative for Sage Creek Colony

8-13-92  
Date

Amendments to House Bill No. 210  
Third Reading Copy

Requested by Representative Peck  
For the Sente Committee on Education and Cultural Resources

Prepared by Eddye McClure  
February 15, 1993

1. Title, line 6.

Following: "DISTRICT"

Insert: "AND COMPLY WITH LAWS RELATING TO THE OPENING OR  
REOPENING OF AN ELEMENTARY OR HIGH SCHOOL"

2. Page 3, line 23.

Following: "CENTER"

Insert: "and must comply with the provisions of 20-6-502 or 20-6-  
503 prior to receiving state equalization aid"

Amendments to House Bill No. 210  
Third Reading Copy

Exhibit #16  
DATE 3-3-93  
BILL NO. HB 210

Requested by Representative Peck  
For the Senate Committee on Education and Cultural Resources

Prepared by Eddy McClure  
February 16, 1993

1. Title, line 6.

Following: "DISTRICT;"

Insert: "PROHIBITING A CLOSED SCHOOL OR SCHOOL ATTENDANCE CENTER,  
WHOSE ANB IS NOT TRANSFERRED TO ANOTHER PUBLIC SCHOOL, FROM  
RECEIVING A FOUNDATION PAYMENT THE ENSUING SCHOOL YEAR FOR  
THE ANB OF THE CLOSED SCHOOL OR ATTENDANCE CENTER;"

2. Title, line 7.

Following: "20-1-101,"

Strike: "AND"

Insert: ", 20-3-205,"

Following: "20-9-311,"

Insert: "20-9-313, AND 20-9-314,

3. Page 6, line 5.

Following: line 4

Insert: "Section 2. Section 20-3-205, MCA, is amended to read:

"20-3-205. Powers and duties. The county superintendent has  
general supervision of the schools of the county within the  
limitations prescribed by this title and shall perform the  
following duties or acts:

(1) determine, establish, and reestablish trustee  
nominating districts in accordance with the provisions of 20-3-  
352, 20-3-353, and 20-3-354;

(2) administer and file the oaths of members of the boards  
of trustees of the districts in his county in accordance with the  
provisions of 20-3-307;

(3) register the teacher or specialist certificates or  
emergency authorization of employment of any person employed in  
the county as a teacher, specialist, principal, or district  
superintendent in accordance with the provisions of 20-4-202;

(4) act on each tuition application submitted to him in  
accordance with the provisions of 20-5-301, 20-5-302, 20-5-304,  
and 20-5-311 and transmit the tuition information required by 20-  
5-312;

(5) file a copy of the audit report for a district in  
accordance with the provisions of 20-9-203;

(6) classify districts in accordance with the provisions of  
20-6-201 and 20-6-301;

(7) keep a transcript and reconcile the district boundaries  
of the county in accordance with the provisions of 20-6-103;

(8) fulfill all responsibilities assigned to him under the  
provisions of this title regulating the organization, alteration,  
or abandonment of districts;

(9) act on any unification proposition and, if approved,  
establish additional trustee nominating districts in accordance  
with 20-6-312 and 20-6-313;



(10) estimate the average number belonging (ANB) of an opening school in accordance with the provisions of 20-6-502, 20-6-503, 20-6-504, or 20-6-506;

(11) process and, when required, act on school isolation applications in accordance with the provisions of 20-9-302;

(12) complete the budgets, compute the budgeted revenues and tax levies, file final budgets and budget amendments, and fulfill other responsibilities assigned to him under the provisions of this title regulating school budgeting systems;

(13) submit an annual financial report to the superintendent of public instruction in accordance with the provisions of 20-9-211;

(14) monthly, unless otherwise provided by law, order the county treasurer to apportion state money, county school money, and any other school money subject to apportionment in accordance with the provisions of 20-9-212, 20-9-334, 20-9-347, 20-10-145, or 20-10-146;

(15) act on any request to transfer average number belonging (ANB) in accordance with the provisions of 20-9-313(3);

(16) calculate the estimated budgeted general fund sources of revenue in accordance with the provisions of 20-9-348 and the other general fund revenue provisions of the general fund part of this title;

(17) compute the revenues and the district and county levy requirements for each fund included in each district's final budget and report the computations to the board of county commissioners in accordance with the provisions of the general fund, transportation, bonds, and other school funds parts of this title;

(18) file and forward bus driver certifications, transportation contracts, and state transportation reimbursement claims in accordance with the provisions of 20-10-103, 20-10-143, or 20-10-145;

(19) for districts that do not employ a district superintendent or principal, recommend library book and textbook selections in accordance with the provisions of 20-7-204 or 20-7-602;

(20) notify the superintendent of public instruction of a textbook dealer's activities when required under the provisions of 20-7-605 and otherwise comply with the textbook dealer provisions of this title;

(21) act on district requests to allocate federal money for indigent children for school food services in accordance with the provisions of 20-10-205;

(22) perform any other duty prescribed from time to time by this title, any other act of the legislature, the policies of the board of public education, the policies of the board of regents relating to community college districts, or the rules of the superintendent of public instruction;

(23) administer the oath of office to trustees without the receipt of pay for administering the oath;

(24) keep a record of his official acts, preserve all reports submitted to him under the provisions of this title, preserve all books and instructional equipment or supplies, keep all documents applicable to the administration of the office, and

surrender all records, books, supplies, and equipment to ~~his~~ the successor;

(25) within 90 days after the close of the school fiscal year, publish an annual report in the county newspaper stating the following financial information for the school fiscal year just ended for each district of the county:

(a) the total of the cash balances of all funds maintained by the district at the beginning of the year;

(b) the total receipts that were realized in each fund maintained by the district;

(c) the total expenditures that were made from each fund maintained by the district; and

(d) the total of the cash balances of all funds maintained by the district at the end of the school fiscal year; and

(26) hold meetings for the members of the trustees from time to time at which matters for the good of the districts must be discussed."

Renumber: subsequent sections

4. Page 9, line 17.

Following: line 16

Insert: "Section 4. Section 20-9-313, MCA, is amended to read:

"20-9-313. Circumstances under which the regular average number belonging ~~may~~ must be increased or decreased. (1) The average number belonging of a school, calculated in accordance with the ANB formula prescribed in 20-9-311, ~~may~~ must be increased or decreased when:

(1) (a) the opening of a new elementary school or the reopening of an elementary school has been approved in accordance with 20-6-502. The average number belonging for the school, including any transfer of ANB to the opening school from an existing budget unit must be established by the county superintendent and approved, disapproved, or adjusted by the superintendent of public instruction no later than the fourth Monday in June. If the county superintendent determines that pupils are included in an existing school's ANB calculation, the ANB must be decreased in the pupils' former elementary school.

(2) (b) the opening or reopening of a high school or a branch of the county high school has been approved in accordance with 20-6-503, 20-6-504, or 20-6-505. The average number belonging for the high school, including any transfer of ANB to the opening or reopening school from an existing budget unit, must be established by the county superintendent's estimate, after an investigation of the probable number of pupils that will attend the high school. If the county superintendent determines that pupils are included in an existing public school's ANB calculation, the ANB must be decreased in the pupils' former high school. The final ANB must be approved, disapproved, or adjusted by the superintendent of public instruction no later than the fourth Monday in June.

(3) (c) a district anticipates an increase in the average number belonging due to the closing of any private or public school or school attendance center in the district or a neighboring district. The estimated increase in average number

belonging and any transfer of ANB from an existing budget unit must be established by the trustees and the county superintendent and approved, disapproved, or adjusted by the superintendent of public instruction no later than the fourth Monday in June.

~~(4)~~ (d) a district anticipates an unusual enrollment increase in the ensuing school fiscal year. The increase in average number belonging must be based on estimates of increased enrollment approved by the superintendent of public instruction and must be computed in the manner prescribed by 20-9-314.

~~(5)~~ (e) for the initial year of operation of a program established under 20-7-117(1), the ANB to be used for budget purposes is the same as one-half the number of 5-year-old children residing in the district as of September 10 of the preceding school year, either as shown on the official school census or as determined by some other procedure approved by the superintendent of public instruction;

~~(6)~~ (f) a full-time special pupil, as defined in 20-9-311, in a given school fiscal year may no longer be considered a full-time special pupil in the ensuing school fiscal year (the superintendent of public instruction may grant one ANB for the pupil for the ensuing school fiscal year); or

~~(7)~~ (g) a high school district provides early graduation for any student who completes graduation requirements in less than eight semesters or the equivalent amount of secondary school enrollment or when a high school district provides early graduation for a class of students who have completed the requirements for graduation after 175 pupil-instruction days in the 12th grade. The increase must be established by the trustees as though the student had attended to the end of the school fiscal year and must be approved, disapproved, or adjusted by the superintendent of public instruction.

(2) If a school or school attendance center, as defined in 20-1-101, closes and the ANB is not transferred to another budget unit, a foundation payment may not be made in the ensuing school year for the ANB attributed to the closed school or school attendance center.

Section 5. Section 20-9-314, MCA, is amended to read:

"20-9-314. Procedures for determining eligibility and amount of increased average number belonging due to unusual enrollment increase. A district that anticipates an unusual increase in enrollment in the ensuing school fiscal year, as provided for in 20-9-313~~(4)~~(1) ~~(d)~~, may increase its foundation program for the ensuing school fiscal year in accordance with the following provisions:

(1) Prior to May 10, the district shall estimate the elementary or high school enrollment to be realized during the ensuing school fiscal year, based on as much factual information as may be available to the district.

(2) No later than May 10, the district shall submit its application for an unusual enrollment increase by elementary or high school level to the superintendent of public instruction. The application must include:

- (a) the enrollment for the preceding school fiscal year;
- (b) the average number belonging used to calculate the

foundation program schedule amount for the current school fiscal year;

(c) the average number belonging that will be used to calculate the foundation program schedule amount for the ensuing school fiscal year;

(d) the estimated enrollment, including the factual information on which the estimate is based, as provided in subsection (1); and

(e) any other information or data that may be requested by the superintendent of public instruction.

(3) The superintendent of public instruction shall immediately review all the factors of the application and shall approve or disapprove the application or adjust the estimated average number belonging for the ensuing ANB calculation period. After approving an estimate, with or without adjustment, the superintendent of public instruction shall:

(a) determine the percentage increase that the estimated enrollment increase is over the current enrollment; and

(b) approve an increase of the average number belonging used to establish the ensuing year's foundation program in accordance with subsection (5) if the increase in subsection (3)(a) is at least 6%.

(4) The superintendent of public instruction shall notify the district of the decision by the fourth Monday in June.

(5) Whenever an unusual enrollment increase is approved by the superintendent of public instruction, the increase of the average number belonging used to establish the foundation program for the ensuing ANB calculation period is the difference between the enrollment for the ensuing school fiscal year and 106% of the current enrollment. The amount determined is the maximum allowable increase added to the average number belonging for the purpose of establishing the ensuing year's foundation program.

(6) Any equalization or entitlement increases resulting from provisions of this section must be reviewed at the end of the ensuing school fiscal year. If the actual enrollment is less than the average number belonging used for foundation program and entitlement calculations, the superintendent of public instruction shall revise the foundation program and entitlement calculations using the actual average number belonging. All payments received by the district in excess of the revised entitlements are overpayments subject to the refund provisions of 20-9-344(3)."

Renumber: subsequent section

DATE 3-3-93SENATE COMMITTEE ON EducationBILLS BEING HEARD TODAY: H B 210

Name	Representing	Bill No.	Check One	
			Support	Oppose
Jake Wipf	Miller Colony	210		X
Sam P. Wipf	New Rockport	210		X
George P. Hofer	New Rockport	210		X
James P. Wipf	Miller Colony	210		X
Richard W. Cameron	Lavina Schools Ryegeate Schools	210		X
Lowell R. Krawinkel	Huttente Colonies	210		X
John Hofer	Ryegeate Colony School	210		X
Elias P. Wipf	New Rockport Col.	210		X
Ed Hofer	North Haver	210		X
John D. Wurtz	Sage Creek Wd	210		X
Mr. Stall	Hilford Twp	210		X
David P. Hofer	Sage Creek Colony	210		X
Wes Waldron	WFEA	210		X
John Alving	Galata	210		+
Paul P. Waldron	Chester	210		+
Paul P. Wipf	Chester mt	210		X

## VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 3-3-93

SENATE COMMITTEE ON Education

BILLS BEING HEARD TODAY: HB 210

Name	Representing	Bill No.	Check One	
			Support	Oppose

David Hofer	Elem. Dist 10 Liberty County	H.B. 210		X
X George Waldner		210		X
Ed Wipf	Martinsdale Okla	H.B. 210		X
Lewis J. Jernsted	Elem Dist 10 Liberty Co	H.B. 210		X
Ralph Pack	Dept of Agriculture			
Joseph Hofer	Elem Dist 10 Liberty County	H.B. 210		X
Peter Hofer	Elem Dist 10 Liberty County	H.B. 210		X
Paul J. Wipf	Martinsdale Mont			

## VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 3-3-93SENATE COMMITTEE ON EducationBILLS BEING HEARD TODAY: HB 210

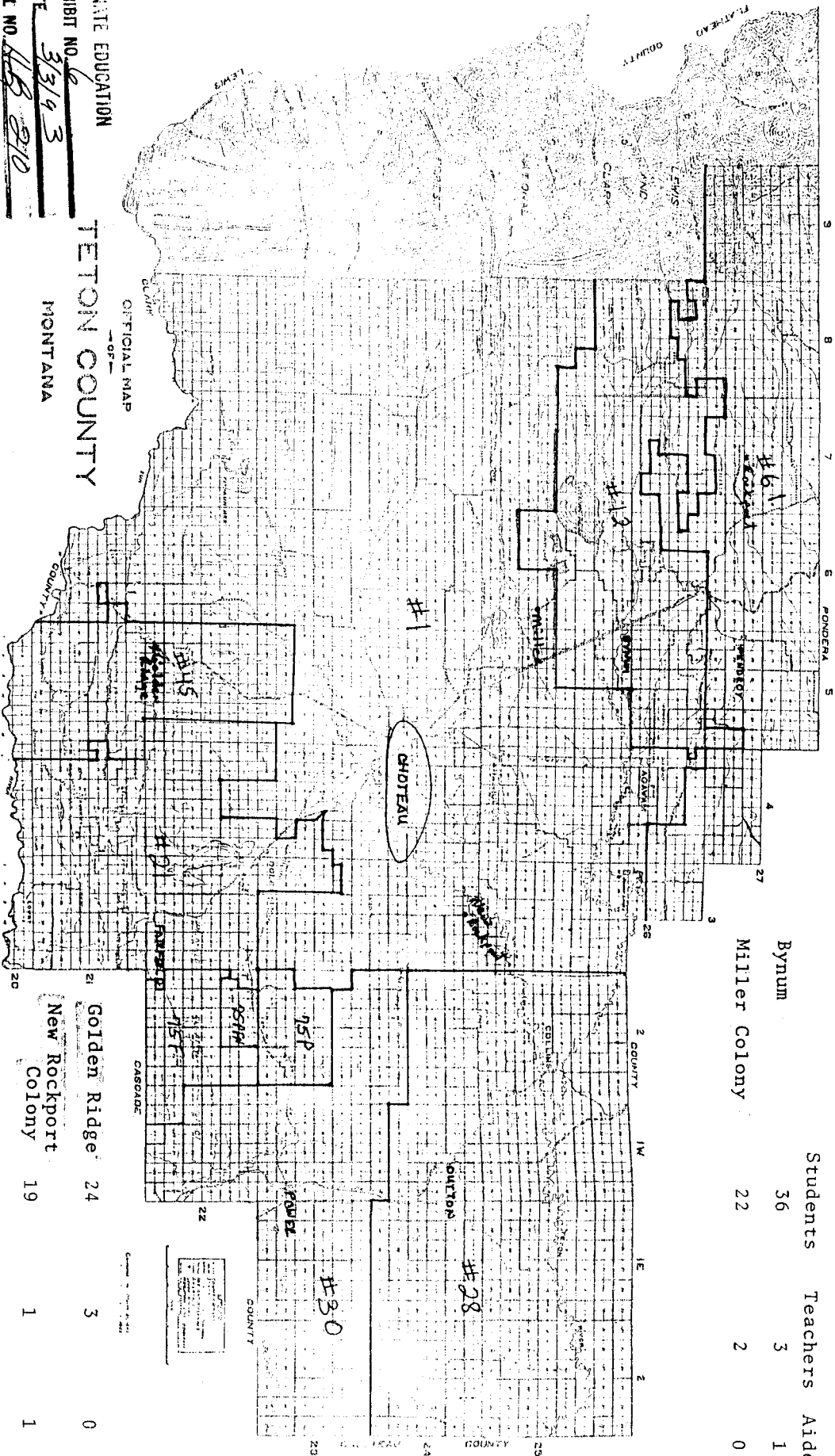
Name	Representing	Bill No.	Check One	
			Support	Oppose
Jill Siderius	New Rockport School	210		X
Charlotte Tacke	School district #45	210		X
Gwyn Andeerson	Teton Co Supt	210		X
H Scott Haynes	Board Member <sup>A-15</sup> Teton Co.	210		T
Stacy Hyatt	Miller Colony School District #12	210		X
Edward J. Wipf	Mariondale Colony	210		X
Sam S. Hofer	Springdale Colony	210		X
Jae S. Hofer	Springdale Colony	210		X
Mike Wipf	Springdale Colony	210		X
Gusan Luinstra	Brynum School	210		X
Robert Wundel	Home Schools	210	X	
Wm W. Klineasser	Richard Creek	210		X
Warren Morehouse	T.C. Co. Supt	210		X
John G. Klineasser	Richard Creek	210		X
Robert L. Snodgrass	Tax payers - Self	210	X	
Gene Gayer	Tax payers - SELF	210	X	

## VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

STATE EDUCATION  
 EXHIBIT NO. 6  
 DATE 3/3/43  
 BILL NO. 448 210

OFFICIAL MAP  
 OF  
**TETON COUNTY**  
 MONTANA



	Students	Teachers	Aides
Bynum	36	3	1
Miller Colony	22	2	0

Golden Ridge	24	3	0
New Rockport Colony	19	1	1



SENATE EDUCATION

EXHIBIT NO. 5

DATE 3/3/93

BILL NO. HB 210

TO: Members of the Senate Education and Cultural Resources Committee

FROM: Gwyn M. Andersen, Teton County Supt. of Schools

RE: House Bill 210

DATE: March 3, 1993

I have given each of you a blue sheet of paper that lists the five attendance centers that will be affected by House Bill 210, their host school, and their resident district. I would like to ask you to sort through the testimony that you have heard and will hear and focus on that testimony which is directly related to these five attendance centers.

I have not seen the details of the fiscal note but it is my understanding that it includes figures for attendance centers established by Pendroy and Sunburst during this past school year, both of which are in their resident district and will not be affected by House Bill 210.

There are 40 Hutterite Colonies in the state of Montana. The status of their educational program is as follows:

- 11 Independent Elementary Schools
- 13 Attendance Centers - In Resident District
- 5 Attendance Centers - Out of Resident District
- 7 Private Schools
- 1 Home School - 2 children
- 3 Send Children to Town

The specifics on these educational institutions have been included in the packet of information provided to you by Mr. Dave Hofer, Board Chairman from Eagle Creek School District.

The independent elementary schools, attendance centers in their resident district, and attendance centers outside of their resident district are all basically the same creature. They are all public schools on colony sites. What will be gained by targeting the five that are out of their resident school district? Do we really need a law to govern five situations. Even if the remaining seven private schools were to request attendance centers out of district, do we really need a law to govern 12 situations.

## **PARENTAL CHOICE**

One of the components of America 2000, which is a plan for the future of education put together by the former president and all the governors of the United States, is parental choice. Allowing parents to make a choice as to which schools their children will attend. Historically the schools in Teton County have not charged tuition and the students freely attend the school of their choice and not always in their resident district. I have in my office 65 attendance agreements which address the needs of 102 students who have chosen to attend school outside of their resident districts. Should this same opportunity be denied the students attending school in the five attendance centers just because they happen to be sponsored by schools outside of their resident school district.

## **TETON COUNTY**

In Teton County we have two small rural elementary districts serving as host schools for two attendance centers through the use of interlocal agreements, which have been filed with the County Clerk and Recorder and the Secretary of State.

I have provided each of you with a map of Teton County, some statistics about the attendance centers and the public schools that they are working with. As you can see the Miller Hutterite Colony is actually closer to Bynum, their host district, than they are to Choteau their resident district. The majority of their land is actually in the Bynum School District, however the parcel of land that the school sets on is in the Choteau School District. There is a greater distance between New Rockport and their host district, Golden Ridge. However, the distance has not presented any problems in their working relationship.

Representative Peck suggests that the only reason these host districts took on the responsibility of an attendance center was for financial gain. There would have to be something wrong with a Board of Trustees that would take on responsibilities that would be a financial detriment to their district. Due to budget restraints where funding was not received for the first six percent of an unexpected enrollment increase the smaller districts with smaller enrollments were able to receive at least partial funding for the students in the first year of operation. The small amount of increased foundation program money that came to their schools is small compensation for the responsibility they have taken on.

In the time that the two attendance centers have been in operation both parties have come to realize that their working relationship has been enhanced by the fact that the Trustees and supervising teachers from the small rural elementary districts have the knowledge and experience to best address the multi-grade teaching situation that is present in the attendance centers. It is my belief that Trustees and teachers from the rural elementary districts are more suited to the operation of an attendance center than a larger district might be.

# FINANCING

## OUT OF DISTRICT ATTENDANCE CENTERS IN TETON COUNTY

	State Found. Per Pupil 92-93	Gen Fund Exp. Per Pupil 91-92	All Funds Exp. Per Pupil 91-92
Bynum		2700	3009
Miller Colony	2627		
Golden Ridge		2459	3444
New Rockport Colony	2398		
Choteau			
K-6 246	1913		
7-8 71	2651		
317	2078	3,186	4394

In the two Teton County situations, the state is in fact contributing more per student from the foundation program to the students in these out of district attendance centers. However, it does cost between 1,700 and 1,900 dollars per students more to educate the students in the resident school district, Choteau, than it does to educate the students at the attendance centers. The difference in cost would be made up at the local level. Regardless of where the money is distributed from it is all ultimately collected from the same people.

The attendance centers had some start up costs in this first year of operation that they won't have every year which will serve to reduce the cost per pupil in the future.

This same senario is also true of the other three attendance centers who would be affected by this bill. It is costing more per pupil to educate the students in their resident district than it is to educate the students at the attendance centers.

We all know that you can make figures show whatever you want them to show. I could present you with the figures for each attendance center, but instead lets resort to common sense. Common sense will tell you that you can educate children for less money when there are no transportation costs, no school lunch costs, no janitorial and building maintenance and supplies costs, no classroom furniture costs, and no utility costs.

The attendance centers and host districts share a district clerk and utilize the County Superintendent as their administrator, thus no additional administrative costs have been incurred.

The attendance agreements are granted on a year to year basis and the pressure is on the colonies to assist in cost containment in order to be able to continue the existance of their attendance centers. I believe that there is more of a financial hold over

these schools than any other schools in the state.

#### **LEAST RESTRICTIVE LEARNING ENVIRONMENT**

Number 2 of the fiscal note assumes that "these children will remain in the public school system and attend schools in the district where they reside". I don't believe that this is the case in Teton County. The Choteau School District can not financially afford to operate these two colonies attendance centers and attending their resident school district will not provide the least restrictive learning environment for the colony students. The choice then becomes private schooling.

In Teton County 41 more students have become a part of the public education system since September through Interlocal Agreements. I believe that public education in Montana is still far superior to the alternatives of home schools and private schools. Most of you having been participants in public education in Montana yourselves, must surely see the educational benefit to children that is taking place in these attendance centers. Please don't close the door to education on these children because of their need for some flexibility in education due to their individuality. The door has just been opened after 45 years.

Educators make a practice of making exceptions to meet the individual needs of students. We are spending a great deal of time and money attempting to meet the needs of students who have been identified as being "at risk" due to individual differences.

We have Special Education, Gifted and Talented, Chapter 1, Stay in School, and Homebound, just to name a few of the programs that are in place to meet the needs of the individuality of children. The services of these programs are provided in the "least restrictive environment" which may be at school or in homes or in alternative schools.

Because of their cultural individuality, if these Hutterite students were to attend their resident school district they would soon join the ranks of those who are termed as "at risk", then we could expend more time and money attempting to overcome the adversities they face on top of the cost of educating them instead of initially making allowances for them to be educated in the "least restrictive learning environment".

#### **EDUCATIONALLY SOUND**

I can tell you that the attendance centers in Teton County are educationally sound. Through attendance agreements the public schools on Hutterite Colonies are meeting the requirements of the accreditation standards and federal and state laws in regard to public education. It is the belief of some people that the school districts who host out of district attendance centers have compromised their beliefs about public education in exchange for cash. I can assure you that all of the compromises that have been made in the area of curriculum and school law have been on the part of the Colony people not the host school district. The attendance

agreements are a format for clarification of what will happen at the attendance center and are renewable annually. Very simply, if the agreements are not complied with it is a good probability that an attendance center will not be granted for the following year. The school districts that are hosting the attendance centers have no problems enforcing the accreditation standards and federal and state laws in the attendance centers. Once again, I believe that there is more control over these schools than any other in the state.

#### CONCERNS

**Taxes** - I have been questioned repeatedly about the property tax status of Hutterite Colonies. Hutterite Colonies do in fact pay property taxes. School taxes, state, county, and local, paid by the two attendance centers in Teton County amount to \$60,848.73.

**Liability Insurance** - In both cases liability insurance has been purchased by both the Colony and the host school district to adequately cover liability for accidents.

**Audio-Visual Aids** - Representative Rose stated that the reason Choteau did not agree to an attendance center for the Miller Colony was due to their desire not to have audio-visual equipment used in the school. In fact negotiations ended when the Choteau School District determined that they could not financially afford to operate one attendance center let alone two. Along those same lines, due to budget constraints the Office of Public Instruction has moved the state AV library to Western Montana College and requested legislation to remove the statute calling for the state to provide the library. This action makes it hard for me to believe that the use of audio visuals in education is a priority. There are many teachers in the field that don't use audio-visual aids for instruction in their classroom.

**High School Attendance** - All of the students attending these two attendance centers will complete the eighth grade as required by law. Both of these schools are attached to elementary school districts making Choteau the high school district. At that time the parents of these students have the same options as any other parent in the State of Montana, public, private or home school. If this concerns you, perhaps we should be looking at the laws that govern private and home schools in the state and not just focusing on those laws as they pertain to Hutterite students.

**Educational Atmosphere** - One of the school buildings on the attendance centers in Teton County also serves as the colony church after school hours. The other building is strictly a school and church is not conducted in the same building. Representative Peck has maintained that you can't take the church atmosphere out of a building. I have brought pictures to share with you of the classrooms. Their churches are not what you would imagine, there are no statues, no stained glass windows, nor any crucifixs, they are very simplistic atmospheres. I maintain that it is harder to take the school atmosphere out of the building. The example I used

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at the first hearing was one of attending church in a building with crepe paper ghosts hanging from the ceiling.

#### SUMMARY

Both of the out of district attendance centers in Teton County are in a position to request land transfers to neighboring school districts. The Choteau School District stands to lose \$246,192 in taxable value, \$10,685 in property tax dollars per year, not to mention the motor vehicle taxes and personal property taxes that would be lost as a result of the land transfers. This is an action that has been avoided through the use of interlocal agreements. You have in school law given local trustees "the sole power and authority to transact all fiscal business and execute all contracts in the name of the district". Please allow them to carry out that with which they are charged within the law according to their local situation.

I recently testified before this committee on Senate Bill 293, which would have forced local school boards to form a joint board, on the premise that school boards in general are not working together. Here is just one example of how they are working together for the benefit of students through the use of interlocal agreements, which were legislatively approved. House Bill 210 would negate this cooperation between boards, this board cooperation topic is receiving mixed messages.

The attendance centers are both cost effective and educationally sound and they are a win win situation for the host and resident districts as well as the colonies. We so rarely encounter win win situations that I believe they should be taken advantage of when we do.

Please give House Bill 210 a do not pass.