

DISTRIBUTED BY:  
CROSBY OPINION SERVICE  
2210 East 6th Ave.  
Helena, MT 59601  
406-443-3418

VOLUME NO. 46

OPINION NO. 2

EDUCATION - Payment of teachers for contractual leave days during instructional and professional development meetings;  
EMPLOYEES, PUBLIC - Payment of teachers for contractual leave days during instructional and professional development meetings;  
LABOR RELATIONS - Payment of teachers for contractual leave days during instructional and professional development meetings;  
SALARIES - Payment of teachers for contractual leave days during instructional and professional development meetings;  
SCHOOL DISTRICTS - Payment of teachers for contractual leave days during instructional and professional development meetings;  
TEACHERS - Payment for contractual leave days during instructional and professional development meetings;  
ADMINISTRATIVE RULES OF MONTANA - Rule 10.65.101;  
MONTANA CODE ANNOTATED - Sections 20-4-304, 39-31-101 to -409;  
OPINIONS OF THE ATTORNEY GENERAL - 45 Op. Att'y Gen. No. 21 (1993), 43 Op. Att'y Gen. No. 34 (1989), 42 Op. Att'y Gen. No. 37 (1987), 38 Op. Att'y Gen. No. 116 (1980), 38 Op. Att'y Gen. No. 20 (1979), 37 Op. Att'y Gen. No. 113 (1978).

HELD: Pursuant to Mont. Code Ann. § 20-4-304, a teacher must either attend the annual instructional and professional development meetings of teachers' organizations or attend other in-service training sometime during the year as approved by the trustees. A teacher cannot use contractual leave to avoid the obligation to attend one or the other kind of training.

February 27, 1995

Mr. Mike Weber  
Richland County Attorney  
201 West Main, Courthouse  
Sidney, MT 59270

Dear Mr. Weber:

You have requested my opinion on a question arising from an ambiguity in the statute governing attendance at the annual instructional and professional development meetings of teachers' organizations. I have phrased your question as follows:

May a teacher use contractual leave to avoid the obligation under Mont. Code Ann. § 20-4-304 to attend either instructional and professional development meetings or other appropriate in-service training?

The factual situation that gives rise to your question is a dispute between the Sidney Public Schools and the Sidney Education Association [SEA] involving teachers who seek to use collectively bargained personal leave during time set aside for annual instructional and professional development meetings of teachers' organizations, which are traditionally scheduled during a four-day weekend in late October each year. Mont. Code Ann. § 20-4-304, as amended in 1989, requires the schools to close during the days these annual meetings are scheduled, and obligates the teachers to acquire in-service training. It states as follows:

The trustees of a school district shall close the schools of the district for the annual instructional and professional development meetings of teachers' organizations. A teacher may attend instructional and professional development meetings without loss of salary or attend other appropriate inservice training, as may be prescribed by the trustees, without loss of salary. If a teacher does neither, he must not be paid.

Id. Your letter informs me that the collective bargaining agreement (master agreement) establishes 17 days per year of sick and personal leave, to be used under conditions set forth in the master agreement. The master agreement also establishes a grievance procedure, which culminates in binding arbitration, for the resolution of disputes over the application or interpretation of the master agreement.

A recent Attorney General's Opinion discusses the limits on my authority to construe the language of a collective bargaining agreement:

Where parties have entered into a collective bargaining agreement under which they agree to submit issues of contract interpretation to grievance and arbitration, the grievance procedure must be followed, and the issues cannot be addressed in the first instance in another forum. Allis Chalmers Corp. v. Lueck, 471 U.S. 202, 219-20 (1985).

45 Op. Att'y Gen. No. 21 (Dec. 30, 1993). Your question does not require me to construe the agreement between the SEA and the Sidney Public Schools. You ask only whether a statute limits the ability

46 Op. Att'y Gen. No. 2  
February 27, 1995  
Page 3

of the parties to the agreement to contract over a specific condition of employment. This has traditionally been a question which the Attorney General and the courts have answered without construing a particular collective bargaining agreement.

Collective bargaining between public employers and employees is established and encouraged by statute in Montana, Mont. Code Ann. §§ 39-31-101 to -409. However, the right of public employees to bargain collectively is limited by a legislative expression of public policy. Several Opinions of the Attorney General have reiterated the general rule that "when a particular employment condition for public employees has been legislatively set, it may not be modified through collective bargaining without statutory authorization." 43 Op. Att'y Gen. No. 34, 103 at 105 (1989); 42 Op. Att'y Gen. No. 37, 149 at 151 (1987); 38 Op. Att'y Gen. No. 116, 408 at 410 (1980); 38 Op. Att'y Gen. No. 20, 71 at 73 (1979); 37 Op. Att'y Gen. No. 113, 486 at 488-89 (1978). See also School Dist. No. 12 v. Hughes, 170 Mont. 267, 273-75, 552 P.2d 328 (1978); City of Billings v. Smith, 158 Mont. 197, 490 P.2d 221 (1971); Abshire v. School Dist. No. 1, 124 Mont. 244, 220 P.2d 1058 (1950).

There is no question that the final sentence of Mont. Code Ann. § 20-4-304 unconditionally prohibits payment of a teacher if neither of the conditions set forth in the statute is met. The statutory conditions are that a teacher either attends "the annual instructional and professional development meetings of teachers' organizations," or attends "other appropriate inservice training, as may be prescribed by the trustees" (Mont. Code Ann. § 20-4-304). I find that the statute prohibits payment of the teacher's salary in cases where the teacher attends *neither* type of training. Thus, the law does not require that the teacher "not be paid" if the teacher misses the annual teachers' organization meetings as long as the teacher attends "other appropriate inservice training" which has been approved by the trustees.

However, nothing in the statute indicates a legislative intention that the "other appropriate inservice training" refer only to training offered during the four-day weekend in October when the "annual instructional and professional development meetings" traditionally occur. Mont. Admin. R. 10.65.101 requires "a minimum of three of the [total of seven "pupil instruction-related"] days for instructional and professional development meetings or other appropriate in-service training." Some school districts recognize that this requirement may be met by attending the annual teacher organization meetings or by attending other in-service training throughout the year as approved by the trustees. This flexibility is particularly important to teachers who coach or sponsor extracurricular activities held during the fall. Athletic

competitions and related events are frequently held in football, girls' basketball, and cross-country during the weekend when the teachers' organizations meet. It would be impossible for teachers involved in these events to fulfill their in-service training requirements by attending these meetings and to fulfill their extracurricular activities contracts as well. There is no indication in the statute or in its legislative history that the legislature intended to require teachers who are coaches or sponsors to forfeit two days of pay because their coaching or sponsoring contracts prevent them from participating in the annual teacher organization meetings and training sessions. Nor is there an indication that the legislature intended that all extra-curricular activities stop during that weekend.

An interpretation of the statute which requires the teacher to attend some form of in-service training during the traditional teacher meeting weekend, on pain of loss of pay, would produce unreasonably punitive consequences. One example is that of the athletic coaches and activity sponsors discussed above. Another could occur if a teacher were on emergency, sick or maternity leave which extended to cover the dates of the annual teachers' organization meetings. If the statute means that a teacher must attend inservice training of some kind during that weekend or forfeit two days of pay, teachers who fall ill or are injured, or those whose maternity leaves fall during that particular period of the year, would be docked pay through no fault of their own. I find no indication that the legislature intended this unreasonable result.

Your opinion request is phrased in terms of a teacher attending neither type of training, and in that case the statutory prohibition controls. However, in the factual situation you present, it is possible that a teacher might use a contractual leave day during the annual meetings of teachers' organizations and still fulfill his or her training requirement if there is an opportunity for "other appropriate inservice training as may be prescribed by the trustees" during the balance of the year. The statute gives the trustees significant control over this subject by giving them the discretion to approve or disapprove alternative in-service training opportunities. However, nothing in the statute operates to preclude collective bargaining as to the approval of in-service training, since such training is clearly a "condition of employment" under Mont. Code Ann. § 39-31-201. I find no indication in the statutory language or legislative history that the legislature intended to dictate to schools that this in-service training obligation be fulfilled according to any particular schedule, as long as the teacher acquires the necessary training.

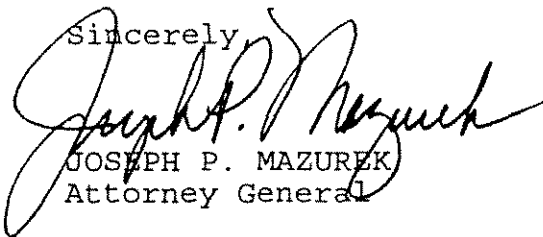
46 Op. Att'y Gen. No. 2  
February 27, 1995  
Page 5

In sum, school districts cannot act beyond their delegated powers: "The Montana Supreme Court decided very early that a school district was a public corporation with limited powers, exercising through its board only such authority as is conferred by law, either expressly or by necessary implication." School Dist. No. 12 v. Hughes, 170 Mont. at 273, 552 P.2d at 332. I conclude that the authority to override the statutory prohibition against payment of a teacher who does not attend instructional and professional development meetings or other approved in-service training has not been conferred by law upon school districts in the state of Montana. If a teacher does not attend the annual teachers' organization meetings or such other in-service training as the trustees approve, the teacher may not be paid for the two days during which the schools are closed pursuant to Mont. Code Ann. § 20-4-304.

THEREFORE, IT IS MY OPINION:

Pursuant to Mont. Code Ann. § 20-4-304, a teacher must either attend the annual instructional and professional development meetings of teachers' organizations or attend other in-service training sometime during the year as approved by the trustees. A teacher cannot use contractual leave to avoid the obligation to attend one or the other kind of training.

Sincerely,



JOSEPH P. MAZUREK  
Attorney General

jpm/rfs/kaa