

SCHOOL DISTRICTS - Abandonment of elementary school district;
SCHOOL DISTRICTS - Attachment of abandoned district to
contiguous district;
STATUTORY CONSTRUCTION - Construing plain meaning of words of
statute;
STATUTORY CONSTRUCTION - Construing statute as a whole and
giving effect to intent of legislature;
MONTANA CODE ANNOTATED - Sections 10-6-502, 20-6-209;
OPINIONS OF THE ATTORNEY GENERAL - 14 Op. Att'y Gen. 126
(1931).

HELD: An elementary school district that has not operated a
school for three consecutive school years has been
abandoned pursuant to Mont. Code Ann. § 20-6-209 and may
not petition to reopen the school under Mont. Code Ann.
§ 20-6-502.

January 10, 2002

Mr. Richard A. Malagisi
Sweet Grass County Attorney
P.O. Box 1188
Big Timber, MT 59011-1188

Dear Mr. Malagisi:

You have presented three questions for my opinion. Upon
review of your questions, I have determined that an answer to
the following question will resolve all three. Thus, I have
rephrased your question as follows:

May an elementary school which has not been operated
for three consecutive years, and which is in an
elementary district that has been abandoned pursuant
to Mont. Code Ann. § 20-6-209, be reopened at the
request of the abandoned district pursuant to Mont.
Code Ann. § 20-6-502?

The following background information is taken from your letter
of request and from a memo submitted by the Office of Public
Instruction (OPI). The Bridge school district was an
elementary school district in Sweet Grass County. Within the
Bridge school district, the only operating school was the
Bridge School. In August 1998 the Bridge School was closed.
The school did not operate during the school fiscal years of
1998-99, 1999-2000, or 2000-01.

On May 29, 2001, during the Bridge School's third year of non-
operating status, the Superintendent of Public Instruction
received a petition from the Sweet Grass County Superintendent

of Schools requesting that the Bridge School be reopened. OPI denied the petition to reopen the school.

A letter from Deputy Superintendent William Cooper to the Sweet Grass County Commissioners outlines the reason for the denial. Citing Mont. Code Ann. § 20-6-209, Mr. Cooper states, "However, if a school district is not operated for three consecutive fiscal years, then the County Superintendent must declare the district abandoned." This opinion arises out of that denial.

You have argued that the abandonment provisions found at Mont. Code Ann. § 20-6-209 and the provisions governing opening or reopening elementary schools found at section 20-6-502 should be read independently of one another and that the abandonment provisions should not preclude the reopening of the Bridge School. I cannot agree with your conclusion.

Section 20-6-209 outlines when the abandonment of an elementary school district is required. It provides:

20-6-209. Elementary district abandonment. (1) The county superintendent shall declare an elementary district to be abandoned and order the attachment of the territory of the district to a contiguous district of the county when:

(a) a school has not been operated by a district for at least 180 days under the provisions of 20-1-301 for each of 3 consecutive school fiscal years or a lesser number of days as approved by the board of trustees under the provisions of 20-9-806; or

(b) there is an insufficient number of residents who are qualified electors of the district that can serve as the trustees and clerk of the district so that a legal board of trustees can be organized.

(2) The county superintendent shall notify the elementary district that has not operated a school for 2 consecutive years before the first day of the third year that the failure to operate a school for 180 days or a lesser number of days than approved by the board of trustees under the provisions of 20-9-806 during the ensuing school fiscal year constitutes grounds for abandonment of the district at the conclusion of the succeeding fiscal school year. Failure by the county superintendent to provide the notification does not constitute a waiver of the abandonment requirement prescribed in subsection (1)(a).

(3) Any abandonment under subsection (1)(a) becomes effective on July 1. Any abandonment of an elementary district under subsection (1)(b) becomes effective immediately on the date of the abandonment order.

The county superintendent's duty to declare an elementary district to be abandoned is a mandatory duty pursuant to subsection (1) which cannot be waived pursuant to subsection (2). Because the Bridge school district did not operate a school for three consecutive fiscal school years, the abandonment provisions of section 20-6-209 apply.

You have argued that I should apply Mont. Code Ann. § 20-6-502, which sets forth the process for opening or reopening an elementary school, independently of the abandonment provisions found in Mont. Code Ann. § 20-6-209. This approach, however, would not be in accordance with the well-accepted principles of statutory construction that must apply when interpreting Montana statutes.

The most common of these canons requires that if the intention of the legislature can be determined from the plain meaning of the words used, I may go no further and may apply no other means of interpretation. State v. Marker, 302 Mont. 380, 386, 15 P.3d 373, 377 (2000) (citations omitted). And, as the Montana Supreme Court has noted, when interpreting various statutes together I must adhere to the following:

In construing a statute, this Court must read and construe each statute as a whole so as to avoid an absurd result and to give effect to the purpose of the statute. Indeed[, s]tatutes do not exist in a vacuum, [but] must be read in relationship to one another to effectuate the intent of the statutes as a whole. This Court will, if possible, construe statutes so as to give effect to all of them. When more than one statute applies to a given situation, such construction, if possible, is to be adopted as will give effect to all.

State v. Marker, 302 Mont. 380, 387, 15 P.3d 373, 377 (2000) (citing Skinner Enters. v. Board of Health, 286 Mont. 256, 271-72, 950 P.2d 733, 742 (1997)).

Applying these basic principles, I do not agree with your argument that the abandonment statutes were not meant to preclude an abandoned elementary school district from petitioning to reopen a school. Section 20-6-502 governs the process for reopening an elementary school, while section 20-6-209 outlines when an elementary district must be abandoned. As the Supreme Court noted, section 20-6-502 cannot be read in a vacuum; I must take into consideration the abandonment provisions in section 20-6-209.

Interpreting the provisions of section 20-6-209, I must give the words employed therein their usual meaning unless it is apparent from the context that the legislature intended a different meaning. Montana Beer Retailers Protective Ass'n v. State Bd. of Equalization, 95 Mont. 30, 34, 25 P.2d 128, 130 (1933). In this instance, the legislature did not define the term *abandonment*. However, the usual meaning of the word *abandon* or *abandonment* typically implies an irreversible event. As defined by *Webster's New International Dictionary* (2d ed. 1934), the term *abandon* means "to relinquish or give up with the intent of never again resuming or claiming one's rights or interests in."

Black's Law Dictionary provides a similar definition: "The surrender, relinquishment, disclaimer, or cession of property or of rights. Voluntary relinquishment of all right, title, claim and possession, with the intention of not reclaiming it." *Black's Law Dictionary* 2 (6th ed. 1990).

Thus, analyzing the plain meaning of the words used in section 20-6-209, I conclude that where a school district has not operated a school for three consecutive school fiscal years, the abandonment outlined in that section is a permanent one. This construction gives effect to both section 20-6-209 and section 20-6-502. An elementary school may be reopened in accordance with section 20-6-502 so long as the petitioning district has operated a school for 180 days in one of the three previous consecutive school fiscal years. However, section 20-6-502 presumes the existence of a district. If a school district, such as the Bridge school district in this instance, has not operated a school for at least 180 days for each of the three previous consecutive school fiscal years, the district must be abandoned by the county superintendent. Thus, the Bridge School District cannot request the reopening of the school under section 20-6-502.

While the Supreme Court has considered issues surrounding the abandonment of an elementary school district, it has not directly addressed the issue you have raised. However, the Court has acknowledged the legislature's intent to abandon school districts which have not been in operation. In State ex rel. McDonnell v. Musburger, 111 Mont. 579, 583, 111 P.2d 1038, 1040 (1941) (citing 14 Op. Att'y Gen. 126 (1931) at 127), the Court cited to an Attorney General's Opinion in which then-Attorney General L. A. Foot stated: "In my opinion . . . it was clearly the intention of section 970 [now codified at Mont. Code Ann. § 20-6-209], after its amendment by chapter 65 of the twenty-first legislative assembly, to require all districts to be abandoned that had not actually conducted school therein." Nothing in section 20-6-209 or section 20-6-502 indicates that this overriding intent of the legislature has changed.

I would also note, however, that section 20-6-209 requires the county superintendent to attach the territory of the abandoned district, in this case the Bridge school district, to another contiguous district. Nothing in section 20-6-209 would prevent this contiguous district from petitioning to reopen the Bridge School if the conditions of section 20-6-502 are satisfied.

THEREFORE, IT IS MY OPINION:

An elementary school district that has not operated a school for three consecutive school years has been abandoned pursuant to Mont. Code Ann. § 20-6-209 and may not petition to reopen the school under Mont. Code Ann. § 20-6-502.

Very truly yours,

MIKE McGRATH
Attorney General

mm/as/dm