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March 9, 2009

David L. Puyear, Executive Director  
Montana Rural Education Association  
P. O. Box 1612  
Helena, Montana 59624

Re: House Bill 488

Dear Dave,

This will confirm our earlier discussions regarding issues related to House Bill 488 now pending before the Montana Legislature.

The bill proposes changes to Section 20-6-105, Montana Code Annotated, relating to the transfer of territory from one school district to another. As we discussed, there are several questions raised regarding the effect that the proposed paragraph (1)(c) will have on existing practices for school districts.

The paragraph in question reads:

“School districts that consolidated prior to the repeal of 20-6-205 [allowing annexation of elementary school districts; repealed July 1, 2005] may petition for changes in their boundaries under the law in effect on July 1, 2005.”

HB 488, para. 1(c).

The phrase “school districts” must be clarified to specify now-existing school districts. For example, when the schools districts in Dutton and Brady consolidated, they created the Dutton-Brady School District. Presumably, Dutton-Brady could petition under the prior law, but neither the former Dutton nor Brady districts could petition for any land transfer as they no longer exist. A contrary interpretation would potentially empower non-existent school districts to take action on behalf of a non-existent student population to the detriment of a consolidated district.

Limiting the statute to present districts is especially important because the cash, tax base, and resources of a district that consolidates with another are absorbed into and become the property of the consolidated district. See, e.g., Sections 20-6-414 and 20-6-417, MCA. A contrary interpretation may raise an issue regarding an unfunded legislative mandate. Any time that a statute imposes a new duty upon a school district, some means to finance the activity must be provided. Section 1-2-113(1), MCA. In the case of districts that consolidated prior to July 1, 2005, if the statute is not limited to the newly created district, they would presumably have an obligation to budget for potential transfer petitions from one of the former constituent districts. This would be a new obligation and require state funding. Section 1-2-113(2), MCA. I see no funding mechanism in H.B. 488.

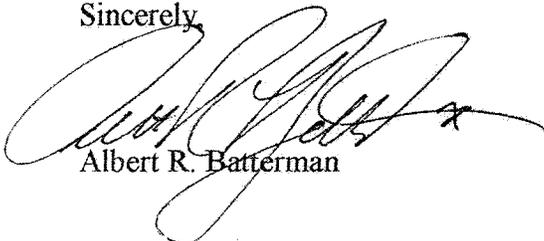
The proposed bill uses the phrase "school district", which requires careful interpretation. "School district" has a number of connotations in law, and may variously be interpreted to mean elementary, high school, or K-12 districts. Compare Section 20-6-101(1), MCA, with Section 20-6-101(2) and (3), MCA, and Section 20-6-701(2), MCA. The statutory reference in paragraph (1)(c) is to legislation that affected only elementary school districts; presumably, it is intended to cover elementary districts and replace, at least in part, the annexation procedure or authority of the prior statute. Otherwise, the reference makes little sense and would be mere surplusage. This would be contrary to the rules of statutory construction, which require that a statute is to be interpreted to give effect to all of its parts. Section 1-2-101, MCA.

A final consideration relates to the unintended consequence of H.B. 488. The proposed paragraph seems to promote predatory practices on the part of districts that are contiguous to consolidated districts. The current statute requires consent from the superintendent of a K-12 district prior to the filing of a transfer petition. K-12 districts are frequently created when school districts consolidate. H.B. 488 circumvents this consent requirement and would permit a neighboring district to recruit a small territory. In the case of Dutton and Brady, the recruitment of either community would leave the other with a significant budgetary shortfall from the loss of half of its taxable property. Such a loss would have predictable results on facilities maintenance, curriculum, staffing, and the other key components to an effective school district. H.B. 488 would provide a perpetual target of opportunity and never permit the consolidated districts created prior to July 1, 2005, to operate knowing that they would not have to fend off any expansionist neighbors.

H.B. 488 appears to solve a problem that does not exist. Consolidated districts merge for many reasons. To compel a limited number of those districts to potentially and perpetually re-visit the issue will adversely affect their ability to focus on their students and communities.

Please call if you have any questions or would like to discuss this matter further.

Sincerely,



Albert R. Batterman