

1-15-2016

## *In re Petition to Transfer Territory from Vaughn School District to Power School District: Leaning Heavily on the Principle of Substance over Form*

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### Recommended Citation

Luc Brodhead, Case Note, *In re Petition to Transfer Territory from Vaughn School District to Power School District: Leaning Heavily on the Principle of Substance over Form*, 77 Mont. L. Rev. Online 1, [https://scholarship.law.umt.edu/mlr\\_online/vol77/iss1/1](https://scholarship.law.umt.edu/mlr_online/vol77/iss1/1).

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**CASENOTE; *In re Petition to Transfer Territory from Vaughn School District to Power School District: Leaning Heavily on the Principle of Substance over Form***

**Luc Brodhead**

As the final authority for interpreting Montana statutes, the Montana Supreme Court cannot make its interpretations lightly. To guide its hand, the Court relies on the principles of statutory interpretation and the codified notion that the “law respects form less than substance.”<sup>1</sup> This principle enables the Court to excuse technical deficiencies in the name of judicial efficiency and justice when it determines that the deficiency does not implicate the substance of the statute.

In *In Re Petition to Transfer Territory From Vaughn Elementary School District to Power Elementary School District*<sup>2</sup>, the Court invoked this principle to support its conclusion that a new elementary school had met the statutory opening requirements. The Court had to reach that conclusion to protect the school from a land grab by a neighboring school district. While the Court had good intentions, its reasoning did not fully support the conclusion that the elementary school met each requirement. Rather, the Court leaned heavily on the principle of substance over form to excuse deficiencies that stood in the way of a just result. Consequently, the Court turned a carefully applied judicial gloss into a powerful trump card: a simple phrase the Court can invoke when it wants to overlook the express words of the Legislature.

**I. FACTUAL AND PROCEDURAL HISTORY**

In February 2013, several members of the Hillcrest Hutterite Colony petitioned the Vaughn School District Board of Trustees to open a public elementary school in one of the colony facilities.<sup>3</sup> The School District agreed to provide a full-time teacher, a teacher’s aid, teaching supplies, textbooks, and administrative support.<sup>4</sup> The school, named the Hillcrest Attendance Center (Attendance Center), began welcoming students late summer of 2013.<sup>5</sup>

In November of 2013, Vaughn School District received a petition from Power School District to transfer a specific portion of its territory pursuant to Mont. Code Ann. § 20–6–105.<sup>6</sup> Under that provision, the local electorate can petition to transfer territory among school districts as long

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<sup>1</sup> MONT. CODE ANN. § 1–3–219 (2015).

<sup>2</sup> *In Re Petition to Transfer Territory From Vaughn Elementary School Dist. to Power Elementary School Dist.*, 360 P.3d 1119 (Mont. 2015).

<sup>3</sup> *Id.* at 1120.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

as the statutory criteria for the territory are met.<sup>7</sup> One such requirement is that the “territory to be transferred is not located within 3 miles, over the shortest practicable route, of an operating school in the district from which it is to be transferred.”<sup>8</sup>

A panel of county superintendents was assembled to address the petition. Citing the above provision, the panel dismissed the transfer request because the Hillcrest Attendance Center was located within 3 miles of the territory.<sup>9</sup> The commissioners concluded that the Attendance Center is a school under the statutory definition and “operates as any public school in the state of Montana.”<sup>10</sup>

Power School District sought judicial review of the decision on the issue of whether the Attendance Center constituted a school for the purpose of limiting territory transfers.<sup>11</sup> The district court affirmed, holding that “[i]n all respects, [the Attendance Center] is an operating school maintained under state law at public expense.”<sup>12</sup> Power School District appealed the district court’s decision.<sup>13</sup>

## II. MAJORITY HOLDING

On appeal, the Montana Supreme Court upheld the district court’s decision, holding that the Attendance center was a school under the statutory definition and thus affirmed the dismissal of the transfer request.<sup>14</sup> To support its decision, the Court interpreted the statutory definition of an “operating school” under § 20–6–501 and found that, in substance, the Attendance Center met the standard despite statutory deficiencies in how the school was established.<sup>15</sup>

The Court acknowledged the statutory definition of a school as being “an institution for the teaching of children that is established and maintained under the laws of the state of Montana.”<sup>16</sup> Having done so, it readily concluded that the Attendance Center met the requirement of being “an institution for the teaching of children,” pointing out that, under the agreement between Vaughn School District and the Hillcrest Colony, the Attendance Center would operate as a public school of the Vaughn School District, it would be provided with teachers and supplies, and it was required to meet all school district, state, and federal laws.<sup>17</sup>

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<sup>7</sup> MONT. CODE ANN. § 20–6–105(1) (2015).

<sup>8</sup> *Id.* at (1)(a)(iii).

<sup>9</sup> *In Re Vaughn Elementary*, 360 P.3d at 1120.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 1122–23.

<sup>15</sup> *In Re Vaughn Elementary*, 360 P.3d at 1122–23.

<sup>16</sup> *Id.* at 1121 (citing § 20–6–501).

<sup>17</sup> *Id.* at 1121–22.

The Court also addressed whether the Attendance Center met the requirement of being “established and maintained” under Montana law.<sup>18</sup> It did so in response to Power School District’s argument that the Attendance Center “was not opened consistent with the procedures set forth in § 20–6–502,” specifically that the opening lacked approval from the county commissioners.<sup>19</sup> Reviewing the argument, the Court acknowledged that § 20–6–502 provides that a petition to open an elementary school must be presented “to the board of county commissioners for their consideration,” and that “the board may approve or disapprove the requested opening.”<sup>20</sup> The Court acknowledged that the Vaughn School District Trustees somehow missed this step before opening the Attendance Center.<sup>21</sup> Nonetheless, the Court concluded that the school still was “established . . . under the laws of the state of Montana.”<sup>22</sup>

To reach this conclusion, the Court invoked the principle of substance over form and held that, in substance, the school met the “established” element of the statutory definition.<sup>23</sup> Despite lacking approval from the county commissioners, the school was still approved by “local school authorities,” and the facts of the case satisfied the substance of what it means to be “established . . . under the laws of the state of Montana.”<sup>24</sup> The Court’s final conclusion articulated that to hold otherwise would “truly elevate form over substance.”<sup>25</sup>

### III. JUSTICE MCKINNON’S DISSENT

Justice McKinnon dissented from the Court’s opinion, asserting that the Attendance Center should not have been considered a school and thus should not be funded, accredited, or protected from the land transfer.<sup>26</sup> She focused on how the Legislature “specifically provided” for a county commissioner’s approval before an elementary school can be opened, and she argued that to ignore this requirement would “be tantamount to disregarding the plain language of the statutory scheme and omitting language that the Legislature inserted.”<sup>27</sup>

She further justified her position, asserting that, not only did the Legislature unambiguously include the requirement, but that it had significant policy justification for doing so.<sup>28</sup> She reasoned that it is the

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<sup>18</sup> *Id.* at 1122.

<sup>19</sup> *Id.*

<sup>20</sup> MONT. CODE ANN. § 20–6–502(3).

<sup>21</sup> *In Re Vaughn Elementary*, 360 P.3d at 1122.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 1122–23.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at 1122.

<sup>26</sup> *Id.* at 1126.

<sup>27</sup> *In Re Vaughn Elementary*, 360 P.3d at 1123.

<sup>28</sup> *Id.* at 1123–24.

county commissioners who actually levy the required taxes to fund the opening of a new school and that they are the ones accountable to the taxpayers for the subsequent tax increases.<sup>29</sup> She also pointed out that “the statutory scheme allows the county commissioners one substantive opportunity to exercise their power over the funding of a new school . . . and this comes at the time the school is established pursuant to § 20–6–502.”<sup>30</sup>

McKinnon concluded that the Court overstepped its function by “fundamentally alter[ing]” the Legislature’s design for establishing schools, and she made the prediction that “local school trustees may now sidestep elected officials” during that process.<sup>31</sup> She characterized the Court’s decision as “divest[ing] elected officials of power that has been properly granted to them by the Legislature.”<sup>32</sup>

#### IV. ANALYSIS

McKinnon’s dissent explained the legal and policy reasons why school districts need to get approval from county commissioners before opening new schools. In doing so, she demonstrated the significance of the commissioner approval requirement to the overall scheme of regulating and funding of schools in Montana. Considering the significance of the commissioner approval requirement, it is concerning that the Court relied so heavily on the principle of substance over form to justify its decision. If the Court believes that enforcing an unambiguous and significant procedural step is to “elevate form over substance,” then what other statutory requirements will the Court overlook down the road?<sup>33</sup>

This analysis will address how the Court has applied the principle of substance over form in the past and how, in this case, the Court broadened the circumstances where it can gloss over statutory requirements without legitimate justification.

##### *A. The Court Previously Applied the Concept of Substance over Form to Excuse Minor Statutory Deficiencies, but Limited Its Application to Those Deficiencies Determined Nonessential to the Substance of the Statute.*

In the past, the Court has occasionally disregarded formalistic deficiencies, especially in the area of county and municipal administration. Never taking the Legislature’s mandates lightly, the Court only did so so when it first carefully reasoned that the particular statutory requirement

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<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 1124.

<sup>31</sup> *Id.* at 1126.

<sup>32</sup> *Id.*

<sup>33</sup> *In Re Vaughn Elementary*, 360 P.3d at 1122.

was formalistic or superficial. The Court's reasoning would always address whether holding a party to the exact requirement, at the cost of entirely invalidating an otherwise legitimate process, would respect the substance of the statute.

In order to reach these decisions, the Court applied the principle of substance over form. This principle is included in the Montana Code as a "maxim of jurisprudence," and it provides that "the law respects form less than substance."<sup>34</sup> The code describes the purpose of these maxims is to "aid in [the] just application" of the other provisions of the code.<sup>35</sup>

The Court applied the principle in two fairly recent cases where it interpreted statutes regulating county administrative procedure and found the alleged deficiencies insufficient to invalidate the overall process.<sup>36</sup> In *Yurczyk*, the Court upheld the validity of proposed zoning regulations despite the lack of the word "resolution" in their title.<sup>37</sup> The statute at issue required the submission of a "resolution," and the opposing party argued that lack of that term in the title should void the regulations.<sup>38</sup> The Court held voiding the regulations for a mere wording oversight would be to "elevate form over substance."<sup>39</sup> To reach its decision, the Court reasoned that in substance the procedural requirements of the statute were met because the critical mandate of the statute was not to title the document in a certain way but to ensure that any proposed zoning regulations go before the proper elected official before their adoption.<sup>40</sup>

Likewise, in *McKirdy*, the Court upheld the validity of a single petition to transfer territory between two K–12 school districts despite the lack of a second separate petition for the elementary school portion of the territory transfer.<sup>41</sup> The statute identified by the opposing party required two petitions to effectuate a transfer between K–12 school districts, a high school territory transfer petition accompanied by an elementary school territory transfer petition.<sup>42</sup> The opposing party argued that a reasonable reading of the language, "accompanied by," clearly indicates a requirement of two physically separate petitions.<sup>43</sup> The Court held that, although the statute required one petition be accompanied by the other, it would be overly formalistic to require two separate documents when one petition clearly identifies the intent to transfer both high school and elementary school territory.<sup>44</sup> The Court reasoned that a second petition

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<sup>34</sup> MONT. CODE ANN. § 1–3–219.

<sup>35</sup> *Id.* at § 1–3–101.

<sup>36</sup> *McKirdy v. Villeux*, 19 P.3d 207 (Mont. 2000); *Yurczyk v. Yellowstone Cnt'y*, 83 P.3d 266 (Mont. 2004).

<sup>37</sup> 83 P.3d at 271.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *McKirdy*, 19 P.3d 207 at 213.

<sup>42</sup> *Id.* at 210.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.* at 212–13.

was nonessential to the substance of the statute because the single petition contained all the requisite information that would have otherwise been contained in the two petitions.<sup>45</sup>

In both of these cases, the Court balanced its duty to respect the exact terms of a statute as Legislative mandate and its duty to respect form less than substance. The rules of statutory construction accommodate this balancing approach and illustrate the tension between form and substance that the Court faced. The rule provides that “in the construction of a statute, the office of the judge is simply to ascertain what is *in terms or in substance* contained therein, not to insert what has been omitted or to omit what has been inserted.”<sup>46</sup> The rule gives courts permission to choose to construe a statute based on its terms, its substance, or a combination of the two.

In conducting its balancing in *Mckirdy* and *Yurczyk*, the Court demonstrated that before it can diminish the importance of a particular term, it must ascertain that doing so would not ignore the substance of the statute, or in effect, omit some specific purpose that the legislature intentionally inserted.<sup>47</sup> Before coming to its conclusion in *Yurczyk*, the Court determined that, in substance, the statute required that proposed zoning regulations be reviewed by the board of county commissioners.<sup>48</sup> Only by making that determination could the Court safely diminish the importance of other aspects of the statute, like including the word “resolution” in the title of the proposal. Otherwise, the Court was at risk of using its power to override a legislative mandate placed in the code to serve a legitimate policy purpose.

Likewise, in *Mckirdy*, the Court carefully established that the central purpose of the statute was to ensure that local residents signing the petition were aware that it implicated both elementary school and high school territory.<sup>49</sup> Only once it established the substance of the petition requirement could the Court determine that to require two physical documents would be formalistic and would not actually align with the legislative mandate.<sup>50</sup>

Both of these cases demonstrate a carefully reasoned approach of applying the principle of substance over form, and provide a useful contrast to what the Court did here.

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<sup>45</sup> *Id.* at 213.

<sup>46</sup> MONT. CODE ANN. § 1-2-101 (emphasis added).

<sup>47</sup> *Yurczyk*, 83 P.3d at 271; *Mckirdy*, 19 P.3d at 211-13.

<sup>48</sup> *Yurczyk*, 83 P.3d at 271.

<sup>49</sup> *Mckirdy*, 19 P.3d at 212-13.

<sup>50</sup> *Id.* at 213.

*B. In This Case, The Court Broadened its Ability to Excuse Statutory Requirements under the Guise of Substance over Form, and it Established That It Could Do So Without Satisfactory Explanation.*

As discussed above, the Court has invoked the principle of substance over form in circumstances where the parties did their best to follow statutory requirements but failed to meet some unclear or insignificant step. In those situations, the Court took time to explain why the particular requirement did not serve the substance of the statute before it determined that punishing the party for its misstep would not serve justice.

In contrast, the Court here utilized substance over form as a catch-all justification for excusing statutory deficiencies in a situation where it wanted to produce a just result. The consequence of using substance over form in this manner is that it justifies repetition of the overbroad use of the principle in future controversies. In other words, it creates space for the Court to disregard particular statutory deficiencies that stand in the way of what the Court views as a just decision. Moreover, it allows the Court to do so without explaining exactly why a certain provision is excusable or insignificant to the statutory scheme and the Legislature's policy goals.

To avoid this kind of overbroad use of substance over form, the Court needed to address the significance of the county commissioner approval requirement. Had it acknowledged, as Justice McKinnon did, how county commissioner approval is important to a commissioner's obligations to their taxpayers and represents an important step in financing the opening of schools, then the Court would have had to justify why that requirement could be excused.

Rather, the Court offered no admission that the requirement has significance, nor did it offer a satisfactory explanation for why the requirement lacks significance. The Court's only explanation is that county commissioners have no direct supervision over schools.<sup>51</sup> That explanation is insufficient because it is not relevant to the tax policy behind the requirement, which is to give elected officials an opportunity to decide whether to increase taxes on their constituents. The Court claimed that because "local school authorities" approved the school's opening, the substance of the statute's requirements is met.<sup>52</sup> This is also an insufficient explanation because the local school authorities referred to by the Court still lack the taxing power to actually raise the necessary funds. Neither of these explanations amount to a convincing argument that the requirement is formalistic, nor do they establish any criteria for when such a requirement would be part of the substance of the statute. This departure from what the Court did in *McKirdy* and *Yurczyk*, makes it that

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<sup>51</sup> *In Re Vaughn Elementary*, 360 P.3d at 1122.

<sup>52</sup> *Id.*



much easier for the Court to conclude that Legislative mandates are satisfied, even when a plain reading of the statute would suggest otherwise.

By failing to engage in a meaningful discussion of why the requirement was insignificant, the Court made it unclear what types of statutory procedural requirements it will deem formalistic and unnecessary in the future. The consequence of this lack of clarity is that school districts or other local administrative bodies now can only guess what rules the Court will enforce and what rules they can risk avoiding.