

STATE OF MONTANA  
DEPARTMENT OF LABOR AND INDUSTRY  
HEARINGS BUREAU

IN THE MATTER OF THE WAGE CLAIM )	Case No. 1068-2010
OF CRYSTAL TAILFEATHERS, )	
	)
Claimant, )	
	)
	) <b>FINAL AGENCY DECISION</b>
	) <b>GRANTING SUMMARY</b>
vs. )	) <b>JUDGMENT</b>
	)
HEART BUTTE SCHOOL DISTRICT, )	
	)
Respondent. )	

\* \* \* \* \*

**I. INTRODUCTION**

On December 29, 2009, Crystal Tailfeathers filed a claim with the Department of Labor and Industry, contending that Heart Butte School District owed her \$7,892.90 in overtime premium pay. On February 22, 2010, the Department’s Wage and Hour Unit issued a determination holding that the school district owed Tailfeathers \$6,622.09 in overtime premium pay. The school district requested a redetermination. On May 17, 2010, the Wage and Hour Unit issued a redetermination arriving at the same result as the initial determination. On June 7, 2010, the school district appealed the redetermination and requested a hearing.

On June 25, 2010, the Wage and Hour Unit transferred the case to the Hearings Bureau for hearing. Hearing Officer David A. Scrimm held a scheduling conference on September 28, 2010, and set the case for hearing on November 18, 2010.

On September 6, 2010, the school district filed a motion for summary judgment in the case, claiming Tailfeathers was as an exempt employee under the Fair Labor Standards Act. Tailfeathers filed a brief opposing the motion on September 16, 2010. On October 21, 2010, Tailfeathers filed a motion for summary judgment. The parties did not request a hearing on the motions.

Based upon the submissions of the parties and their arguments, the school district's motion for summary judgment is hereby granted, and the case is dismissed. Tailfeathers' motion for summary judgment is denied. The reasons for the rulings on both motions are set forth below.

## II. ISSUE

The issue in this case is whether Heart Butte School District owes overtime premium pay for work performed in excess of 40 hours per week, as provided in the Fair Labor Standards Act, 29 U.S.C. § 207(a)(1) and in Mont. Code Ann. § 39-3-405. The issue presented by the motions for summary judgment is whether Tailfeathers was an exempt employee for purposes of the overtime premium requirement.

## III. ANALYSIS

### A. *Propriety of Summary Judgment in Administrative Proceedings.*

Summary judgment is an appropriate method of dispute resolution in administrative proceedings where the requisites for summary judgment otherwise exist. *Matter of Peila* (1991), 249 Mont. 272, 815 P.2d 139. Summary judgment is appropriate where “the pleadings . . . and admissions on file . . . show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Rule 56(c), Mont. R. Civ. P.

The party seeking summary judgment has the initial burden of establishing the absence of any genuine issue of material fact and entitlement to judgment as a matter of law. Once a party moving for summary judgment has met the initial burden of establishing the absence of a genuine issue of material fact and entitlement to judgment as a matter of law, the burden shifts to the nonmoving party to establish with substantial evidence, as opposed to mere denial, speculation, or conclusory assertions, that a genuine issue of material fact does exist or that the moving party is not entitled to judgment as a matter of law. *Meloy v. Speedy Auto Glass, Inc.*, 2008 MT 122, ¶18 (citing *Phelps v. Frampton*, 2007 MT 263, ¶16, 339 Mont. 330, ¶16, 170 P.3d 474, ¶ P16).

Whether an employee is exempt from the overtime provisions of the FLSA is a question of law appropriately determined on summary judgment. *See Clark v. United Emergency Animal Clinic, Inc.*, 390 F.3d 1124, 1128 (9th Cir. 2004) (affirming district court's order granting summary judgment based on administrative employee

exemption); *Webster v. Pub. Sch. Emples. of Wash., Inc.*, 247 F.3d 910, 917-918 (9th Cir. 2001).

While all reasonable inferences are to be drawn from the offered evidence in favor of the party opposing summary judgment, where the record made on summary judgment discloses no genuine issue of material fact, the burden then shifts to the party opposing summary judgment to present substantial evidence of a genuine issue of material fact. This burden is not met by merely making conclusory or speculative statements or by raising unsubstantiated concerns and theories in a brief. See *Erker v. Kester*, 1999 MT 231, P17, 296 Mont. 123, P17, 988 P.2d 1221, P17. *Disler v. Ford Motor Credit Co.*, 2000 MT 304, P9 (Mont. 2000).

Tailfeathers' response brief to Heart Butte's motion merely makes assertions and was accompanied by no affidavits or other documents contemplated under M.R.C.P. 56(e). Accordingly, Respondent's proposed facts are undisputed. Whether Respondent is entitled to summary judgment as a matter of law must be determined by applying those facts to the law governing the administrative exemption.

*B. Facts Established by the Pleadings and Responses to Discovery Requests on File.*

1. On or about June 10, 2008, Heart Butte School District hired Crystal Tailfeathers to serve as District Clerk/Business Manager for the 2008-2009 school year subject to a 90 day probationary period. (June 10, 2008 Board Meeting Minutes) (October 28, 2008 Board Meeting Minutes (Document Nos. 167-169)).

2. In her employment as District Clerk/Business Manager in the 2008-2009 year, Tailfeathers earned a salary of \$29,120.00 per year. (Document Nos. 127-128).

3. The Board designated Tailfeathers as the direct supervisor of the Assistant Clerk/Office Manager. (Document Nos. 149-152).

4. The Board reaffirmed that Tailfeathers was the direct supervisor of the Assistant Clerk/Office Manager at its March 10, 2009 Board meeting. (Document Nos. 198-201).

5. Tailfeathers' duties included preparing and submitting to the Board a financial report of receipts and disbursements of all school funds on an annual basis and performing all the preparations legally required for the notice and conduct of school elections. (Document No. 53).

6. At the June 16, 2009 Board meeting, Tailfeathers distributed her District Clerk's May & June Report outlining the duties she performed in her capacity as District Clerk/Business Manager.

7. Tailfeathers' May & June Report noted that she performed the following duties:

- Submitting monthly reports to the county treasurer;
- Balancing with the county treasurer;
- 941 reporting;
- Workman's comp reporting;
- Unemployment reporting;
- E-grant (requesting cash);
- Payroll;
- Accounts payable;
- Monitoring and assigning purchase orders;
- Student accounts;
- TRS reporting;
- PERS reporting;
- Regular board meeting minutes;
- Comparing W2 information and making sure it was accurate;
- Issuing of W2s;
- School election;
- Making federal tax payments;
- Depositing student account money;
- Payroll Deductions;
- Assisting the public;
- Monitoring of the federal grants (excluding Impact Aid Construction);
- Attending Impact Aid meetings at the state level;
- Making federal case grant requests;
- MAEFAIRS reporting (ANB count);
- Inputting budget information into Foxie Lady;
- Monitoring spending and budgeting;
- Working closely with the superintendent and principal;
- Audit preparation; and
- Daily office procedures.

(Exhibit H at pgs. 1-2)

8. Tailfeathers also “issued W2 forms and reconciled them from the 2007-2008 school year and checked for accuracy and errors.” (Response to Request for Admission No. 14 in Claimant’s Responses to Respondent’s First Set of Discovery Requests (Exhibit I)).

9. Tailfeathers evaluated the assistant clerk at one point and provided a written evaluation of the assistant clerk’s job performance. (Respondent’s Exhibit J).

10. Tailfeathers exercised discretion and independent judgment in the exercise of her duties, including the conduct of the school election, preparing and submitting retirement system and unemployment insurance reports, providing consultation and advice to the Board of Trustees on the district’s finances and business operations, submitting cash grant requests, issuing tax forms, and negotiating with vendors.

### *C. Application of the FLSA and Montana Overtime Exemptions.*

The question of whether Tailfeathers was an exempt employee not entitled to overtime premium pay is the key question in this case and, because Heart Butte School District is an entity covered by the FLSA (29 U.S.C. § 203(e)(2)(C)), implicates both state and federal law. Both the FLSA and state law have provisions requiring employers to pay overtime premium when an employee works more than 40 hours in a work week, unless the employee is exempt. If Tailfeathers is not exempt under the FLSA, then the remedies available under the FLSA govern her claim. Mont. Code Ann. § 39-3-408. If she is exempt under the FLSA, further analysis is necessary to determine if she is exempt under Montana law. *Babinecz v. Montana Highway Patrol*, 2003 MT, 315 Mont. 325, 68 P.3d 715. Thus, the claim must first be analyzed under the FLSA.

The burden of proving an exemption rests on the employer who asserts it. *Kemp v. Board of Personnel Appeals*, 1999 MT 255, 296 Mont. 319, 989 P.2d 317. To meet this burden, the employer must present evidence to show that the employee falls “plainly and unmistakably within the exemption’s terms.” *Id.* at ¶16, citing *Public Employees Ass’n v. D. of Transp.*, 1998 MT 17, 287 Mont. 229, 954 P.2d 21. Questions involving exemption from overtime are narrowly construed to carry out the purposes of the FLSA. *Reich v. Wyoming* (10<sup>th</sup> Cir., 1993), 993 F.2d 739, 741.

Both the FLSA and Montana law contain an exemption from the requirement for overtime premium pay for any employee employed in a bona fide administrative capacity. 29 U.S.C. § 213(a)(1) and Mont. Code Ann. § 39-3-406(1)(j). The school

district contends that Tailfeathers is exempt under the administrative employee exemption.

The U.S. Department of Labor has adopted regulations to define and delimit the exemptions set forth in 29 U.S.C. § 213(a)(1). The relevant portion of the regulations provides:

The term “employee employed in a bona fide administrative capacity” in section 13(a)(1) of the Act shall mean any employee:

- (1) Compensated on a salary or fee basis at a rate of not less than \$455 per week . . . ;
- (2) Whose primary duty is the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer’s customers; and
- (3) Whose primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

29 CFR § 541.200

It is disputed that Tailfeathers earned over \$455.00 per week. Her annual salary (\$29,120.00), divided by 52 weeks in a year, equals \$560.00 per week. No issue has been raised as to whether she was paid on a salary basis. The issues in dispute are Tailfeathers’ primary duty and whether the performance of that duty includes the exercise of judgment and discretion with respect to matters of significance.

### **1. Primary duty**

The regulations of the U.S. Department of Labor addressing an administrative employee’s primary duty state:

(a) To qualify for the administrative exemption, an employee’s primary duty must be the performance of work directly related to the management or general business operations of the employer or the employer’s customers. The phrase “directly related to the management or general business operations” refers to the type of work performed by the employee. To meet this requirement, an employee must perform work directly related to assisting with the running or servicing of the business, as distinguished, for example, from working on a manufacturing production line or selling a product in a retail or service establishment.

(b) Work directly related to management or general business operations includes, but is not limited to, work in functional areas such as *tax; finance; accounting; budgeting; auditing; insurance; quality control; purchasing; procurement; advertising; marketing; research; safety and health; personnel management; human resources; employee benefits; labor relations; public relations, government relations; computer network, internet and database administration; legal and regulatory compliance;* and similar activities. Some of these activities may be performed by employees who also would qualify for another exemption.

29 CFR § 541.201 (emphasis added)

A review of the statutes, policies, and documents governing Tailfeathers' duties as District Clerk/Business Manager demonstrates that she performed office work directly related to the management or general business operations of the school district.

The statutory duties of a school district clerk in Montana are listed in Mont. Code Ann. § 20-3-325, and include:

The clerk of the district must be the custodian of all documents, records, and reports of the trustees. Unless the trustees provide otherwise, the clerk shall:

(a) keep an accurate and detailed accounting record of all receipts and expenditures of the district in accordance with the financial administration provisions of this title; and

(b) prepare the annual trustees' report required under the provisions of 20-9-213.

This list of duties is supplemented by School District Policy 1230 which lists all of the duties outlined in Mont. Code Ann. § 20-3-325, and adds the preparation of financial reports and the performance of all the preparations legally required for the notice and conduct of school elections. In addition, Tailfeathers herself provided an extensive list of the duties she performed as District Clerk/Business Manager in her May & June District Clerk's Report to the Board. Those duties are listed in the statement of facts, above.

Tailfeathers' duties are clearly related to the management and general business operations of the school district. Several of these duties (e.g. budget reports, workers' compensation and unemployment insurance reporting, issuing W-2s, payroll, etc.) fall into the duties expressly listed in 29 CFR. § 541.201(b) that constitute office and non-manual work directly related to the management and general business operations

of the school district. Performance of these duties satisfied the primary duty requirement of the test for an exempt administrative employee under 29 CFR § 541.200.

## **2. Discretion and independent judgment**

The third element required to qualify as an exempt administrative employee is the exercise of judgment and discretion in the performance of the employee's primary duty. The regulations of the U.S. Department of Labor on this subject state:

(a) To qualify for the administrative exemption, an employee's primary duty must include the exercise of discretion and independent judgment with respect to matters of significance. In general, the exercise of discretion and independent judgment involves the comparison and the evaluation of possible courses of conduct, and acting or making a decision after the various possibilities have been considered. The term "matters of significance" refers to the level of importance or consequence of the work performed.

(b) The phrase "discretion and independent judgment" must be applied in the light of all the facts involved in the particular employment situation in which the question arises. Factors to consider when determining whether an employee exercises discretion and independent judgment with respect to matters of significance include, but are not limited to: whether the employee has authority to formulate, affect, interpret, or implement management policies or operating practices; whether the employee carries out major assignments in conducting the operations of the business; whether the employee performs work that affects business operations to a substantial degree, even if the employee's assignments are related to operation of a particular segment of the business; whether the employee has authority to commit the employer in matters that have significant financial impact; whether the employee has authority to waive or deviate from established policies and procedures without prior approval; whether the employee has authority to negotiate and bind the company on significant matters; whether the employee provides consultation or expert advice to management; whether the employee is involved in planning long- or short-term business objectives; whether the employee investigates and resolves matters of significance on behalf of management; and whether the employee represents the company in handling complaints, arbitrating disputes or resolving grievances.

(c) The exercise of discretion and independent judgment implies that the employee has authority to make an independent choice, free from immediate direction or supervision. However, employees can exercise



discretion and independent judgment even if their decisions or recommendations are reviewed at a higher level. Thus, the term “discretion and independent judgment” does not require that the decisions made by an employee have a finality that goes with unlimited authority and a complete absence of review. The decisions made as a result of the exercise of discretion and independent judgment may consist of recommendations for action rather than the actual taking of action. The fact that an employee’s decision may be subject to review and that upon occasion the decisions are revised or reversed after review does not mean that the employee is not exercising discretion and independent judgment. For example, the policies formulated by the credit manager of a large corporation may be subject to review by higher company officials who may approve or disapprove these policies. The management consultant who has made a study of the operations of a business and who has drawn a proposed change in organization may have the plan reviewed or revised by superiors before it is submitted to the client.

#### 29 CFR §541.202

A review of Tailfeathers’ duties as District Clerk/Business Manager illustrates how she satisfied several of the factors demonstrating discretion and independent judgment. As District Clerk, Tailfeathers was responsible for conducting school district elections and she even noted in her May & June 2009 Report that she was responsible for the school election and that it went “smoothly without problems.” The district clerk is designated by law as being the election administrator. Mont. Code Ann. § 13-1-101(9). The duties of the clerk in administering the school election include “prepar[ing] a certified list of the names of all candidates entitled to be on the ballot and the official wording for each ballot issue” and arranging for the printing of the ballots. Mont. Code Ann. § 20-20-401. Responsibility for conducting school elections is a “major assignment in conducting the operations of the business” and required Tailfeathers to “formulate, affect, interpret, or implement management policies or operating practices.”

Tailfeathers was also responsible for Teachers’ Retirement System, Public Employees’ Retirement System, and Unemployment Insurance reporting. This critical reporting is undoubtedly a major assignment in conducting the business of the school district. She also clearly provided “consultation or expert advice to management,” in this case the Board of Trustees, on matters related to the district’s finances and business operations. The Board meeting minutes during Tailfeathers’ tenure as District Clerk featured a District Clerk/Business Manager’s report that required her to exercise discretion and independent judgment in determining how to

organize her reports and in what fashion to present them to the trustees. All of these duties also constitute duties affecting “business operations to a substantial degree, even if the employee’s assignments are related to operation of a particular segment of the business.”

Tailfeathers also notes in her May & June Report that she was responsible for making E-Grant requests and for submitting federal grant cash requests. Tailfeathers’ involvement as District Clerk in making such grant requests as well as monitoring spending and budgeting also indicates her involvement in “planning long- or short-term business objections.” Tailfeathers was also responsible for issuing W-2 forms and “reconciling them from the 2007-2008 school year and check[ing] for accuracy and errors.” The reconciling of the W-2s and checking them for errors clearly requires the exercise of independent judgment in determining the accuracy of the W-2s.

Two other important factors for determining that an employee exercises discretion and independent judgment are “whether the employee investigates and resolves matters of significance on behalf of management” and “whether the employee has authority to negotiate and bind the company on significant matters.” 29 C.F.R. § 541.202(b). Tailfeathers notes in the first paragraph of her May & June Report that after some issues with late payments, she contacted and convinced several of the vendors to allow the school district to continue to charge items. Purchasing and the credit status of the district was a matter of significance and Tailfeathers’ status as District Clerk/Business Manager allowed her to negotiate a solution to these significant issues.

Although Tailfeathers claimed in her earlier pleadings and discovery responses that her actions and decisions had to be approved by the Board or by the Superintendent, 29 C.F.R. § 541.202(c) makes clear that an employee can still exercise discretion and independent judgment “even if their decisions or recommendations are reviewed at a higher level.”

Simply because Tailfeathers’ actions and decisions as District Clerk were subject to review or approval by her supervisors, be it the Board of Trustees or the Superintendent, does not mean she did not exercise discretion and independent judgment.

A review of the relevant statutes and federal regulations in conjunction with the duties performed by Tailfeathers while employed as District Clerk/Business Manager for the school district clearly demonstrates that she exercised discretion and

independence in the performance of many of her tasks. Therefore, Tailfeathers' employment as District Clerk/Business Manager satisfied the third requirement of the test for an exempt administrative employee under 29 C.F.R. Part 541.200 and, thus, qualified her as an administrative exempt employee under the FLSA.

### **3. Administrative employee exemption under Montana law**

For purposes of Montana law, Tailfeathers' claim is governed by Admin. R. Mont. 24.16.202, which was repealed on May 14, 2010.<sup>1</sup> However, the provisions of the last paragraph of that rule, formerly known as the "short test" for determining if an employee was exempt, are very similar to the current provisions of 29 CFR § 541.200.

Provided, that an employee who is compensated on a salary or fee basis at a rate of not less than \$200 per week . . . and whose primary duty consists of the performance of [office or nonmanual work directly related to the management policies or general business operations of his employer or his employer's customers], which includes work requiring the exercise of discretion and independent judgment, shall be deemed to meet all of the requirements of this section.

Admin. R. Mont. 24.16.202 (*repealed*)

The only significant difference between this section and 29 CFR § 541.200 is the earnings threshold, which is significantly lower for Montana claims than claims under the FLSA. In any event, Tailfeathers earned more than \$200.00 per week, qualifying her as an administrative exempt employee under Montana law as well as under the federal law.

## **IV. CONCLUSIONS OF LAW**

1. The State of Montana and the Commissioner of the Department of Labor and Industry have jurisdiction over this complaint under Mont. Code Ann. § 39-3-201 et seq. *State v. Holman Aviation* (1978), 176 Mont. 31, 575 P.2d 925.

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<sup>1</sup>Effective May 14, 2010, the Montana Department of Labor and Industry adopted new administrative rules to harmonize the exemptions under the Montana minimum wage and overtime laws with those contained in the FLSA.

2. There is no dispute of material fact in this matter and the Heart Butte School District is entitled to summary judgment as a matter of law.

3. No wages are due the claimant because she was exempt from the requirement for overtime premium pay as an employee employed in a bona fide administrative capacity pursuant to 29 U.S.C. § 213(a)(1) and Mont. Code Ann. § 39-3-406(1)(j).

## V. ORDER

The Heart Butte School District's motion for summary judgment is granted and this matter is dismissed.

DATED this 1st day of November, 2010.

DEPARTMENT OF LABOR & INDUSTRY  
HEARINGS BUREAU

By: /s/ DAVID A. SCRIMM  
DAVID A. SCRIMM  
Hearing Officer

**NOTICE:** You are entitled to judicial review of this final agency decision in accordance with Mont. Code Ann. § 39-3-216(4), by filing a petition for judicial review in an appropriate district court within 30 days of service of the decision. See also Mont. Code Ann. § 2-4-702.