

Opinion No. 81**Schools and School Districts—Budgets, Use of Surplus.**

- Held:**
- 1. Any surplus in an elementary school general fund may be used in the next fiscal year to meet the deficiency in the State aid for the foundation program, but such surplus cannot be used to pay the twenty per cent permissive excess over the foundation program.**
 - 2. Any surplus in a high school general fund may be used in the next fiscal year to meet the deficiency in the State aid for the foundation program and also the fifteen per cent permissive excess over the foundation program.**

January 13th, 1950.

Miss Mary M. Condon
State Superintendent of Public Instruction
State Capitol
Helena, Montana

Dear Miss Condon:

You have requested my opinion concerning the use of the surplus remaining in the post-war reserve fund for maintenance and repair of buildings in the school districts and also the use of any cash balance in the general fund.

Chapter 131, Laws of 1945, as amended by Chapter 161, Laws of 1947, provided for the accumulation of a reserve fund for repair and equipment of school buildings. Section 5 of Chapter 131, Laws of 1945,

as amended by Chapter 161, Laws of 1947, provided that the act would be in effect three years after July 1, 1947, and that any balance on July 1, 1950, must be transferred to the general fund as provided in Section 4, Chapter 131, Laws of 1945. This will result in many school districts having a cash balance at the end of the fiscal year which raises the question of the use of such money under the provisions of Chapter 199, Laws of 1949.

Section 8 of Chapter 199, Laws of 1949, provides for the distribution of funds to school districts by the State Board of Education in the months of December and April of each year from the State Public School Equalization Fund up the basis of reports made to the State Superintendent of Public Instruction for the maintenance and operation of the schools. The standard for the financing of our schools is the foundation program found in Section 3 of Chapter 199 and the distribution of State aid in Section 8, Chapter 199 is limited to fifty per cent of the foundation program for those districts which qualify for State aid. Section 19 of Chapter 199 makes it the duty of the State Superintendent of Public Instruction to notify each County Superintendent of Schools that there will be a deficiency of the funds for State aid. If the surplus remaining in the reserve fund can be applied to meet the deficiency in State aid, there will be no necessity for an extra levy to supply these funds.

Section 8, Chapter 199 in limiting the maximum aid from the State to fifty per cent also recognizes the foundation program as the standard, and the phrase "from all other sources" justifies the utilization of the surplus to maintain the standard and thus meet the State deficiency. This would apply with equal force to any surplus in the general fund, whatever the source, with the exception of the reserves as provided for in Sections 10 and 14 of Chapter 199.

The application of the general fund surplus to meet the permissive additional expenses of twenty per cent for elementary schools, Section 9 of Chapter 199, and fifteen per cent for high schools, Section 14, Chapter 199, raises additional questions. The elementary schools would be precluded from the use of the surplus to meet the additional expense as Section 9 of Chapter 199 contains this limitation:

" . . . but the entire amount of such excess expense over the foundation program shall be paid solely from levies upon the property in such district. . . "

However, there is not such a prohibition as to high school budgets as Section 14, Chapter 199 states:

" . . . but the allowance of such excess expense over the foundation program shall not in any manner increase the amounts to be apportioned hereunder from the State Public School Equalization fund. . . ."

It is reasonable to assume that the Legislature in making the distinction between the elementary and high school budgets recognized

that the surplus in the high school general fund could be used to meet the excess expense over the foundation program.

Is it therefore my opinion:

1. Any surplus in an elementary school general fund may be used in the next fiscal year to meet the deficiency in the State aid for the foundation program, but such surplus cannot be used to pay the twenty per cent permissive excess over the foundation program.

2. Any surplus in a high school general fund may be used in the next fiscal year to meet the deficiency in the state aid for the foundation program and also the fifteen per cent permissive excess over the foundation program.

Very truly yours,
ARNOLD H. OLSEN,
Attorney General.