

Opinion No. 42**Schools and School Districts—Trusts Administered by School Trustees—
Income of Trusts for Scholarships**

Held: A Montana school district may legally accept and administer a testamentary trust for the purpose of providing a first year college scholarship to a student graduating from the high school of the district.

January 9, 1958

Miss Harriet Miller
State Superintendent of Public Instruction
State Capitol
Helena, Montana

Dear Miss Miller:

You have requested my opinion concerning the authority of a school district to accept and act as trustee of gifts in the nature of a testamentary trust. You advise me that a former Montana resident contemplates providing in her will for a gift to a school district which will be held in trust and the income therefrom used periodically to provide a first year college scholarship for an outstanding student of the senior class of the high school of the district.

The acceptance of gifts by school districts subject to the conditions of the gifts is authorized under Section 75-1825, RCM, 1947, which provides in part as follows:

"All school districts and boards of trustees thereof on behalf of such districts are hereby authorized and empowered to accept gifts, legacies and devises, subject to the conditions imposed by the deed of the donor, or will of the testator, or without any conditions imposed."

It is apparent from the above quoted statute that school districts in Montana may administer trusts and in particular testamentary trusts in accord with the conditions and restrictions of the trusts.

A practical problem which will arise from gifts of money which are to be invested and the income devoted to scholarships is the proper investment of the funds so as to both protect the corpus and provide an adequate yield. The Montana Supreme Court in the case of *In re Harper's Estate*, 98 Mont. 356, 40 Pac. (2nd) 51, recognized an inadequacy in our statutes pertaining to trusts in the following language:

"Our statutes contain no express provisions defining the duties or powers of a testamentary trustee in the investment or reinvestment of the funds of the trust."

In view of this deficiency it would be advisable in the preparation of a testamentary trust to define the type of investments for the corpus of the trust. The Montana legislature enumerated proper investments for the public school permanent fund in Section 81-1001, RCM, 1947, which in substance permits the purchase of Montana school district bonds, bonds of the several counties and cities of the state of Montana, bonds of the state of Montana and of the United States and interest bearing warrants of the state of Montana and Montana counties. Restricting the investment of the funds to such securities would afford great protection to the corpus of the trust and such securities could be evaluated very easily before purchase by the trustees of the school district.

A school district in Montana is a public corporation (Section 75-1803, RCM, 1947) and under Section 75-1801, RCM, 1947, it is provided that a school district "shall be known as District No.of..... County." A testator by designating the number of the school district and the county in Montana in which it is located would sufficiently describe the same so that there would be no difficulty in ascertaining the identity of the trustees to administer the trust.

It is therefore my opinion that a Montana school district may legally accept and administer a testamentary trust for the purpose of providing a first year college scholarship to a student graduating from the high school of the district.

Very truly yours,
FORREST H. ANDERSON
Attorney General