

VOLUME NO. 38

OPINION NO. 86

PUBLIC FUNDS - Use of the transportation budget funds by school districts;

PUBLIC FUNDS - Use of general funds by school districts to finance "activity" buses;

SCHOOL DISTRICTS - Use of transportation budget funds for busing between pupils' legal residences and schools;

SCHOOL DISTRICTS - Use of general funds for expenses for maintenance, upkeep, repair, and salaries of bus drivers of "activity" buses;

TRANSPORTATION, PUBLIC - Use of the transportation budget funds by school districts;

MONTANA CODE ANNOTATED - Sections 20-9-102, 20-9-103, 20-9-208, 20-10-101, 20-10-112, 20-10-131, 20-10-132, 20-10-143, 20-10-147.

- HELD: 1. The bus depreciation fund allowed under section 20-10-147, MCA, merely provides for replacement of transportation and activity buses and does not expand use of the transportation fund budget to pay expenses for operation of activity buses.
2. School district trustees must conform their budget to the accounting procedure prescribed by the State Superintendent of Public Instruction, which requires itemizing the expenses of activity buses under the general fund rather than the transportation fund.

2 July 1980

Gordon T. White, Esq.
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Valley County Courthouse
P.O. Box 111
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Dear Mr. White:

You have requested my opinion concerning the following questions:

1. Does section 20-10-147, MCA, which enables "school districts to establish a bus depreciation reserve fund" imply that the expenses for maintenance, upkeep, repair, and salaries of bus drivers of "activity buses" be expended from the transportation budget?
2. Does the "School Finance and Statistics Reference Manual" under Accounting Code 13 published by the State Superintendent of Public Instruction have the force of law in determining proper accounting expenditures for maintenance, upkeep, repair, and drivers' salaries of "activity" buses?

Your first question concerns the extent to which the transportation fund budget, established by Title 20, chapter 10 of the Montana Code Annotated, covers expenses for the operation of school buses. The specific problem raised is the proper accounting expenditures for operation of buses for student activities.

Section 20-10-143, MCA, gives the trustees of a school district broad power in financing a transportation program in their district. The transportation fund budget must include an adequate amount "to finance the administration, operation or maintenance of the transportation program of the district, as determined by the trustees."

However, section 20-10-101(1), MCA, limits the meaning of the term "transportation" to conveyance of pupils between their legal residences and schools, unless the context of the statute clearly indicates otherwise. Therefore, by statutory definition, "transportation" does not include conveyance of pupils for student functions and activities.

The term "transportation program" is also used in other sections in this chapter, such as sections 20-10-131 and 20-10-132, MCA, to refer to the routing or individual transportation system which a district has implemented to satisfy the transportation provisions of this part. Rather than indicating that a separate and more inclusive meaning for the term in section 20-10-143, MCA, was intended, the context clearly indicates that the narrow definition of "transportation" was intended to carry throughout the transportation budget part.

Within the same part, section 20-10-147, MCA, enables the trustees of a school district to establish a bus depreciation reserve fund. The reserve fund, however, expressly may be used only to cover costs of replacement of a bus or two-way radio which has been used for transportation as defined in this chapter, or for conveyance of pupils to or from school activities. The purposes of the reserve fund are to spread the cost of replacing buses and radios over the lifetime of the equipment and to ensure that funds are available when needed for replacement. 37 Op. Att'y Gen. No. 153 (1979). Section 20-10-147, MCA, does not in any way provide for payment of expenses for maintenance, repair, upkeep, or salaries for bus drivers of any buses or equipment.

Subsection (4) of the same statute further requires trustees of a district to submit to the electors any proposal to transfer part or all of the bus depreciation cash balance to any other fund. The reserve fund prohibits use or transfer of the funds for any purpose beyond replacement of buses or two-way radios without taxpayer approval.

The second question concerns the legal effect of Accounting Code 13 published by the office of the Superintendent of Public Instruction. Section 20-10-112, MCA, sets out the duties of the Superintendent under the transportation budget title. The Superintendent is empowered to prescribe rules and forms for the implementation and administration of each district's transportation policies and to disburse state transportation reimbursement according to district policies and provisions of law. Since the transportation title does not apply to buses used for student activities, these statutory provisions do not determine a source for payment of expenses incurred by operation of activity buses.

The Superintendent is authorized under section 20-9-102, MCA, to supervise school budgeting procedure and to estab-

lish rules necessary to secure compliance with school budgeting laws. The Superintendent is thereby given broad supervisory power to approve or adjust the administrative form of district budgeting within the guidelines of express provisions of law.

Section 20-9-103, MCA, requires the Superintendent to prescribe the format of the school budget form, and to provide for proper school budgeting procedures. The expenses for activity buses which are sponsored or supervised by the school district are budgeted to the general fund, itemized under section 01-00-0900 of Accounting Code 13 of "School Finance and Statistics Reference Manual" published by the office of the Superintendent. Under this code section, activity buses are designated "Student Body and Auxiliary Services," such as interscholastic athletics, entertainments, publications, clubs and bands, that are managed by the student body under adult supervision and are not part of the regular instructional program.

The form provided by the Superintendent for the year beginning July 1, 1979, requires a separate accounting for line items within the general fund (Code 01) such as student body and auxiliary services, and separate accountings for line items within the transportation fund (Code 02) and bus depreciation reserve fund (Code 03). Under the bus depreciation reserve fund, the only expenditure item allowed is the purchase of a replacement bus or radio.

Under section 20-9-208, MCA, trustees of any district are authorized to transfer any or all of the excess appropriation amount of one line item to any other appropriation item of the same budgeted fund. Transfers, however, cannot be made between different budgeted funds of the same district. Therefore, trustees may transfer appropriations between line items within the general fund. However, use of the transportation fund budget (Code 02) to meet expenses incurred under a line item of the general fund (Code 01) is prohibited.

THEREFORE, IT IS MY OPINION:

1. The bus depreciation fund allowed under section 20-10-147, MCA, merely provides for replacement of transportation and activity buses and does not expand use of transportation fund budget to pay expenses for operation of activity buses.
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2. School district trustees must conform their budget to the accounting procedure prescribed by the State Superintendent of Public Instruction, which requires itemizing of the expenses of activity buses under the general fund rather than the transportation fund.

Very truly yours,

MIKE GREELY
Attorney General