

**Opinion No. 184.****State Educational Institutions—Students' Union Buildings—Cost of Insurance Payable from Income.**

HELD: Cost of insurance on a students' union building must be paid from the income of the building, being part of the operating cost, as provided by Chapter 10, Extraordinary Session 1933-34, and may not be paid from the university millage fund appropriated for fire insurance.

Insurance is a proper and legitimate item of operating expense.

December 29, 1939.

State Board of Examiners  
The Capitol

Gentlemen:

You have submitted the following facts and question:

"This office has requested the University of Montana to approve a claim for fire insurance premium, for insurance on the Student Union Building at the University, from income funds of the said Student Union Building. The University has objected to paying the premium from the income funds, and holds that the premium should be paid from the appropriation for fire insurance premiums made from the Millage Fund in House Bill No. 363. We are, therefore, compelled to request an opinion from your office.

"Can a claim for operating expense, such as insurance premium, be paid from a general tax appropriation when the insurance covers a building erected under the provisions of Chapter 10, Laws of the Twenty-third Extraordinary Session, 1933-34?"

The authority and power of the State Board of Education in connection with students' union buildings is stated in Section 1 (b) and (c), Chapter 10, Extraordinary Session 1933-34:

"(b) To maintain and operate such students' union buildings and to rent space therein and carry on such activities as will produce a reasonable excess of income over operating expenses.

“(c) To hold the funds derived from the operation of such students’ union buildings and spend the same for repairs, replacements and betterments therein and thereon, and for the retirement of indebtedness incurred in the erection thereof.”

It is clear from these two paragraphs that it was the legislative intention that the operating expenses of a students’ union building should be deducted from the income and that “the excess” or net income should be used for repairs, replacements, betterments and for the retirement of indebtedness incurred in the erection thereof. We are unable to find any words from which we can draw a conclusion that the legislature intended to give the State Board of Education the discretion to use the gross income for the purpose mentioned in paragraph (c) and to pay any or all of the expenses of operation from the general appropriation. See opinion of the Attorney General, Volume 17, p. 276, where a similar act being considered, the Attorney General expressed the opinion that the operating cost of residence halls, such as heat, light, power and water must be paid out of income from such halls and not from appropriations for expenses. We think this opinion is correct.

The authority to rent space in students’ union buildings and carry on such activities “as will produce a reasonable excess of income over operating expenses” amounts to a command to pay operating expenses out of income. The authority granted by the legislature implies a duty as well.

Considering the nature and object of the statute, it seems clear that it was the intent of the legislature to impose a positive duty on the part of the State Board of Education rather than discretionary powers or privileges. By said Chapter 10, the legislature established a definite policy of financing the construction and operation of students’ union buildings, which may not be disregarded by public officers. The statute confers power to perform acts which concern the public interest, and is mandatory.

Rock Island County v. United States, 4 Wall. 435, 446, 18 L. Ed. 419;

Miller v. Aetna Life Insurance Co., 101 Mont. 212, 53 Pac. (2d) 704; 59 C. J. 1076, par. 633.

We think that if the legislature intended to give the State Board of Education any discretion in this respect, suitable words would have been used. Not only is the statute so clear and unambiguous that no construction is necessary, but it has been the administrative practice for years to follow the legislative intention in the manner indicated. We have been unable to find anything in any of our court decisions to the contrary.

That insurance is not only necessary and desirable but a proper and legitimate expense is well recognized by sound business practice. The authority to pay operating expenses of the building out of income, includes authority to insure the building. Furthermore, we do not think that the legislature, by its general appropriation for insurance, intended in any manner to repeal its intent as expressed in said Chapter 10.