

## Opinion No. 140

**Elementary School Budgets, additional teacher, hiring of—Teacher, additional, elementary schools, hiring of—Transfer of Terms in Budgets.**

Held: (a) Under the School District Budget Act (Section 1019.15, Revised Codes of Montana, 1935) each item in the district's budget constitutes an appropriation for a definite and specific purpose, and an appropriation for one purpose may not be paid out for another, **except that a part of an appropriation for one item may be transferred to another when it appears that there is an excess appropriation for the one and a deficiency in the other.**

(b) When the enrollment of any elementary school district has increased during the school year to such an extent that it becomes necessary to employ an additional teacher and no provision has been made in the budget to care for such hiring, the trustees thereof may proceed, in any manner authorized by law, to levy taxes, raise funds, and make expenditures to meet and overcome such emergency.

October 6, 1943

Mr. Edison W. Kent  
County Attorney  
Granite County  
Philipsburg, Montana

Dear Mr. Kent:

You have submitted the following question:

"A certain school district in our county discovered upon the opening day of school that the enrollment had increased to such an extent that it was necessary to employ an additional teacher, and of course they have made no provision for the same in the budget. The question is, what remedy is there for said district so that they may acquire additional funds?"

The answer to your question is contained within the provisions of Section 1, Chapter 193, Laws of 1943, which is an act to amend Section

1019.16, Revised Codes of Montana, 1935, relating to elementary school budgets.

Said Section 1 provides:

"The provisions of this act shall not apply in the case of an emergency caused by destruction or impairment of any school property necessary for the maintenance of school, or by the entering by a court of competent jurisdiction of a judgment for damages against the district, or by enactment of legislation, after the adoption of any final budget, requiring expenditures not contemplated therein, or by an increase in the enrollment in an elementary school during the school year to such an extent as to make necessary the providing of an additional teacher or teachers or additional school facilities, but the trustees of any district, when any such emergency arises therein, may proceed, in any manner authorized by law, to levy taxes, raise funds, and make expenditures to meet and overcome such emergency." (Emphasis mine.)

Chapter 146, Laws of 1931, provides a budget system for school districts. By the act the board of county commissioners is made the board of school budget supervisors; the county superintendent is made the clerk of the board. The board of trustees is chargeable with the duty, on the second Monday in June of each year, of preparing and adopting a preliminary budget for the next ensuing school year. The preliminary budget is then submitted to the county superintendent on or before July 1. The budgets of each district in the county are thereafter considered and examined by the budget board, which must meet on the fourth Monday of July and approve and adopt the final budget for each school district not later than the second Monday in August. The budget board is given power to change (with certain exceptions) any item or amount as shown by the preliminary budget. When the amount which may be expended has been fixed for each item, it "shall constitute the final budget and the appropriations for each school district for the current school year, and the board of school trustees and all officers and employees of such district shall be limited in the making

of expenditures or incurring of liabilities to the amount of such detailed appropriations, respectively." (Section 14).

As said in *State ex rel. McHose v. District Court*, 95 Mont. 320, 26 Pac. (2nd) 345,

"It is clear from this and succeeding sections of Chapter 146, supra, that each item of the budget constitutes an appropriation for a definite and specific object or purpose, and the amount appropriated for one object or purpose may not be used or paid out for another, except that Section 15 makes provision for the transfer of a part of the appropriation from one item to another, but this can be done only when it appears that there is an excess appropriation for one item and a deficiency in another."

The employment of an additional teacher constitutes an emergency against which the budget now in operation makes no provisions, within the meaning of Section 16, Chapter 193, supra, in consequence is removed from the provisions of the budget, except it is still subject to the last four lines of Section 16, which reads:

**"but the trustees of any district, when any such emergency arises therein, may proceed, in any manner authorized by law, to levy taxes, raise funds, and make expenditures to meet and overcome such emergency."** (Emphasis mine.)

It is therefore my opinion: (a) Under the School District Budget Act (Section 1019.15, Revised Codes of Montana, 1935) each item in the district's budget constitutes an appropriation for a definite and specific purpose, and an appropriation for one purpose may not be paid out for another, except that a part of an appropriation for one item may be transferred to another when it appears that there is an excess appropriation for the one and a deficiency in the other. (b) When the enrollment of any elementary school district has increased during the school year to such an extent that it becomes necessary to employ an additional teacher and no provision has been made in the budget to care for such hiring, the trustees thereof may proceed, in any manner authorized by

law, to levy taxes, raise funds, and make expenditures to meet and overcome such emergency.

Sincerely yours,  
R. V. BOTTOMLY  
Attorney General