

Opinion No. 235.

School Districts—Budget—Schools—
Funds, Building.

Held: A school district is not authorized to levy an extra tax and accumulate a building fund to be used after the war for construction purposes. Funds of a school district not expended during the school year lapse and are included in cash on hand for the subsequent school budget.

August 3, 1944.

Mr. W. M. Black
County Attorney
Toole County
Shelby, Montana

Dear Mr. Black:

You have asked if a school district may levy an extra tax and invest the proceeds in U. S. bonds. The proposed fund is to be used after the war for building a new grade school building.

Section 1219, Revised Codes of Montana, 1935, provides for an extra ten mill levy for school districts for building purposes and other designated purposes. The question of the additional levy must be approved by the electors of the district.

Sections 1019.1 to 1019.26, Revised Codes of Montana, 1935, constitute the budget law for school districts. The expenditures of all funds must comply with this act.

There is no provision in the budget law for the creation of a building fund which would be added to from year to year. Section 1019.3, Revised Codes of Montana, 1935, which outlines the budget form provides for "new buildings and alterations (not financed from sale of bonds)."

Section 1019.17, Revised Codes of Montana, 1935, provides:

"All appropriations, other than appropriations for uncompleted improvements in progress of construction, shall lapse at the end of the school years; provided that appropriation accounts shall remain open for a period of twenty (20) days thereafter for the payment of claims incurred against such appropriations prior to the close of the school year and remaining unpaid.

After such period shall have expired all appropriations, except as hereinbefore provided regarding uncompleted improvements, shall be null and void and any lawful claim presented thereafter against any such appropriation shall be provided for in the next ensuing budget."

It is apparent from the above that no building fund may be created over a period of years. Each annual budget may provide funds for "new buildings and alterations," but any surplus will lapse in accordance with the provisions of Section 1019.17, Revised Codes of Montana, 1935. In the preparation of each budget the county treasurer submits a statement which contains "cash on hand June 30, General Fund (including reserve)" and under Section 1019.18, Revised Codes of Montana, 1935, this is deducted in determining the amount to be raised by taxes.

It must be concluded from a consideration of the budget act as a whole that all cash remaining on hand is to be used in the budget for the next year, and that the budget act does not permit or contemplate the creation of a building fund by accumulation from the annual tax levy.

From the law as given us by the legislature, it is my opinion a school district is not authorized to levy an extra tax and accumulate a building fund to be used after the war for construction purposes.

It is also my opinion funds of a school district not expended during the school year lapse and are included in cash on hand for the subsequent school budget.

Sincerely yours,
R. V. BOTTOMLY
Attorney General.