

Opinion No. 243.**Schools and School Districts—Transportation—Board of Trustees of School Districts—County Commissioners.**

Held: In the preparation of an elementary school transportation budget, the school board of budget supervisors may consider and anticipate the one-third reimbursement from the state. There is no authority for the board of county commissioners to make a county-wide levy for the transportation budgets of all the school districts in addition to that provided by Section 1202, Revised Codes of Montana, 1935. If the county has levied its full eight mills to provide its one-third share, and if the district has provided its third, the state is obligated to pay its one-third of the actual cost of transportation even though the amount raised by the county eight mill levy is not sufficient to provide its one-third share.

August 22, 1944.

Mr. Bert W. Kronmiller
County Attorney
Big Horn County
Hardin, Montana

Dear Mr. Kronmiller:

You have submitted the following questions for my opinion:

"1. In the preparation of the annual budget for an elementary school district, may the board of budget supervisors anticipate the one-third reimbursement from the state for transportation costs?

"2. If the amount realized by the levy provided in Section 1202, Revised Codes of Montana, 1935, is not sufficient to provide for the payment of one-third of the transportation costs provided by the budgets

in each school district in the county, may the county commissioners make any additional levy?"

Your first question is answered by Section 14, Chapter 189, Laws of 1943, which provides in part:

"The board of trustees of any school district maintaining an elementary school . . . shall have the authority and it shall be its duty to provide and adopt a complete transportation budget therefor . . . The total amount of the estimated expenditures, as shown by the transportation budget, shall be shown and included in Section 1 of the elementary school budget form as provided in Section 1019.3, and the estimated receipts from reimbursements, as shown in such transportation budget, shall be shown and included in Section 3 of the elementary budget form as provided in Section 1019.9 . . ." (Emphasis mine.)

The emphasized portion of the above quoted allows the consideration of reimbursement from the state in preparation of the transportation budget.

The answer to your second question is found in Subsection (b) of Section 13, Chapter 189, Laws of 1943, which provides in part:

"Each school district maintaining one or more elementary schools, or providing for the transportation of its elementary pupils to attend school in another district, meeting the requirements of this act, shall be entitled to reimbursement from the said county common school fund provided by the tax levy authorized and made in accordance with the provisions of Section 1202, of one-third ($\frac{1}{3}$) of the actual cost of transportation, or services rendered in lieu thereof, semi-annually, such reimbursement to be made on duplicates of the certified claims for reimbursement by the state. No apportionment shall be made of such common school fund in either June or December in each year until after such reimbursements therefrom have been made to such school districts."

This would allow all of the moneys realized by the levy made under Section 1202, Revised Codes of Montana, 1935, to be first applied to the trans-

portation budgets before it is apportioned to the various school districts for general school purposes. The transportation budgets are given the first consideration in the distribution of this fund. Undoubtedly, the legislature felt the fund realized by the levy made under Section 1202 would be more than adequate for the transportation budgets.

Prior to the amendment of Section 14, Chapter 152, Laws of 1941, the county commissioners had the authority to make the levy necessary to meet the transportation budget, but Chapter 189, Laws of 1943, limited the authority of the county commissioners to make a county-wide levy.

It is to be noted that under the provisions of subsection 2 of subsection (a) of Section 14, as amended by Chapter 159, Laws of 1943, a special levy may be made on the property in the district after submission of the question to a vote of the taxpayers in the district, to supply additional funds for the transportation budget of the district. This latter special levy would supply funds in addition to the one-third of the amount to be supplied by the district in the usual manner.

It is true that insofar as the one-third to be provided by the county levy must be provided from the eight mill levy, there being no authority to exceed eight mills. It is likewise true that under paragraph 2 of Section 14, Chapter 152, Laws of 1941, as amended by Section 3, Chapter 189, Laws of 1943, there is no limit to the amount of levy the district may make to provide its one-third share. However, the statute contemplates that the entire actual cost of transportation be borne by the combined contribution of the state, county and district. Therefore, if the county has levied the entire number of mills authorized, and the district has likewise made a levy to provide its one-third share, and if because of the limit on the county levy, two-thirds of the actual cost is not provided, the state is obligated to provide its one-third share of the actual cost of transportation. I am assuming however, that only elementary transportation is involved.

It is, therefore, my opinion:

1. In the preparation of an elementary school transportation budget, the board of budget supervisors

may consider and anticipate the one-third reimbursement from the state.

2. There is no authority for the board of county commissioners to make a county-wide levy for the transportation budgets of all the school districts in addition to that provided by Section 1202, Revised Codes of Montana, 1935.

Sincerely yours,
R. V. BOTTOMLY
Attorney General