

Opinion No. 144.**High Schools—Schools, High—Budget,
High School—Taxation, Schools.****Held: The reserve fund for maintain-
ing high schools from July 1 to
December 1 of each year is to
be considered as a part of, and
included in the maximum budget
as fixed by Section 1263.5, Re-
vised Codes of Montana, 1935,
as amended by Chapter 64, Laws
of 1941, and the two-year in-
crease of 30% allowed under
Chapter 133, Laws of 1945.**

April 25, 1946.

Mr. Ernest E. Fenton
County Attorney
Treasure County
Hysham, Montana

Dear Mr. Fenton:

You have requested my opinion on the question of whether or not the amount of the reserve fund for maintaining a high school from July 1 to December 1 must be included in the maximum budget for high schools.

In your letter you point out that if the reserve fund is not included in the maximum amount allowed for high schools under the provisions of Section 1263.5, Revised Codes of Montana, 1935, as amended by Chapter 64, Laws of 1941, and the emergency increase of thirty per cent permitted by Chapter 133, Laws of 1945, a substantially larger amount of money will be available for the operation of your high school.

Section 1263.2, Revised Codes of Montana, 1935, sets out the preliminary budget form, and in Part I of the form appears the item "Cash Reserve Required to Maintain High School from July 1 to December 1 of Following Year." Section 1263.5, Revised Codes of Montana, 1935, as amended, provides the total amount appropriated in Part I of the preliminary budget shall not exceed the maximum fixed by that section. As the reserve fund is a portion of Part I, it necessarily follows the reserve fund is to be included in fixing the maximum budget for a high school.

You call attention to Section 1203, Revised Codes of Montana, 1935, as amended by Chapter 51, Laws of 1945, which provides school trustees shall

certify the amount needed by the district schools to the county commissioners, and it is specifically stated the trustees shall "separately certify the amount of money needed as a reserve fund." You suggest this section means the reserve fund is to be included in the final budget and not the preliminary. The purpose of Section 1203, as amended, as I view it, is to assure that a school levy will be made each year by having before the county commissioners certificates of the amounts necessary to be raised by taxation. Such certificates would take the place of the final budget, if the latter were not presented on or before the second Monday in August, the final date for it to be filed with the commissioners. That the final budget is controlling is recognized by Section 1203, as amended, in that the section recites:

"That the budget of any school district, after the same is finally approved and adopted, shall be deemed and considered to be in lieu of and to take the place of such certificates. Such reserve fund shall not exceed thirty five per centum (35%) of the amount appropriated in the final and approved budget of the district for the then current school years."

It is therefore my opinion the reserve fund for maintaining high schools from July 1 to December 1 of each year is to be considered as a part of, and included in the maximum budget as fixed by Section 1263.5, Revised Codes of Montana, 1935, as amended by Chapter 64, Laws of 1941, and the two-year increase of thirty per cent allowed under Chapter 133, Laws of 1945.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General