

**Opinion No. 171.****School District Building Fund—  
Building Fund, School District.**

**Held: Funds may be transferred from the "new building and alterations" item of a school budget to the interest and sinking fund during the fiscal year.**

June 21, 1946.

Mr. Fred C. Gabriel  
County Attorney  
Phillips County  
Malta, Montana

Dear Mr. Gabriel:

You have requested my opinion asking if funds may be transferred from a school district building fund to the interest and sinking fund.

In your letter you refer to Sections 1208 to 1210, Revised Codes of Montana, 1935, which sections provide for a building and furnishing fund and transfer of funds. These sections were enacted prior to the budget law for school districts, and insofar as there is a conflict the budget law would control and work an implied repeal of the earlier sections. Section 1019.3, Revised Codes of Montana, 1935, sets

out the budget form for school districts and provides for "new buildings and alterations (not financed from sale of bonds.)"

Section 1019.17, Revised Codes of Montana, 1935, provides appropriations shall elapse at the end of the school year. Thus, there is no building fund which accumulates from year to year, but only such building fund as is provided in each budget for one fiscal year. (See Opinion No. 235, Volume 20, Report and Official Opinions of the Attorney General.)

Section 1019.15, Revised Codes of Montana, 1935, authorizes the transfer of a part of the appropriation from one item to another, but this can be done only during the fiscal year when it appears that there is an excess appropriation for one item and a deficiency in another. (State v. District Court, 95 Mont. 230, 26 Pac. (2d) 345.)

It is well to keep in mind the provisions of Section 3 of Article XIII of the Montana Constitution, which provides:

"All moneys borrowed by or on behalf of the state or any county, city, town, municipality or other subdivision of the state, shall be used only for the purpose specified in the law authorizing the loan."

This provision of our Constitution would preclude any transfer being made from the funds realized from the sale of bonds.

It is therefore my opinion excess funds may be transferred from the "new buildings and alterations" item of a school budget to the interest and sinking fund during the fiscal year.

Sincerely yours,

R. V. BOTTOMLY,  
Attorney General