

Opinion No. 14

School Budget—Budget Supervisors—
County Superintendent of Schools—
Board of Trustees, School District—
Teachers' Salaries.

- Held: 1. A board of school budget supervisors has no authority to assign to a county superintendent of schools the power to approve or disapprove transfer of school district budget items.
2. A board of trustees has authority to transfer surplus money in the teachers' salary item to another item in which there is a deficiency.
3. After the adoption of the final budget, expenditures are solely within the authority of the board of school trustees, subject only to the provisions of the budget act, and no authority exists in the board of budget supervisors or the county superintendent to supervise or control expenditures.

March 7, 1947.

Mr. James D. Freebourn
County Attorney
Silver Bow County
Butte, Montana

Dear Mr. Freebourn:

You have submitted for my opinion the following questions:

1. Has a board of school budget supervisors the authority to assign to a county superintendent of schools the power to approve or disapprove the transfer of school district budget items?
2. Has a board of trustees the authority to transfer money budgeted for high school teachers' salaries to another item during the school year?

3. What power or check has a board of school budget supervisors and the county superintendent as clerk of said board over the extravagant or wilful spending of budget items by a board of school trustees before the current school year is completed?

Your first question is answered by Section 1019.15, Revised Codes of Montana, 1935, as to elementary budgets, and by Section 1263.15, Revised Codes of Montana, 1935, as to high school budgets. The provisions of these sections are clear and unambiguous. Section 1019.15, Revised Codes of Montana, 1935, relative to elementary budgets, provides:

"Whenever it appears to the clerk of any school district that the amount appropriated for any item in the final budget is in excess of the amount actually required to be expended for such item during the year for which such budget was adopted, and that the amount appropriated for any other item in such final budget, and payable from the same fund, is less than the amount which will be actually required for such item during such school year, the clerk of such school district may notify the county treasurer in writing to transfer the excess appropriation, or so much thereof as may be necessary, from one (1) item to the item for which the appropriation is deficient, and the county treasurer must thereup make a transfer of such amount." (Emphasis mine.)

Section 1263.15, Revised Codes of Montana, 1935, as the high school budgets, provides:

"Whenever it appears to the board of trustees of any school district maintaining a high school, or of a county high school, that the amount appropriated for any item in the final high school budget is in excess of the amount actually required to be expended for such item during the year for which such budget was adopted, and that the amount appropriated for any other item in such final budget, and payable from the same fund, is less than the amount which will be actually required for such item during such

school year, such board of trustees may direct the clerk to notify the county treasurer in writing to transfer the excess appropriation, or so much thereof as may be necessary, from such item to the item for which the appropriation is deficient, and the county treasurer must thereupon make a transfer of such amount. Provided, however, that no transfer shall ever be made by a county treasurer between any appropriation made in a budget for maintaining a high school or high schools and any budget appropriation for maintaining elementary grade schools in the same district." (Emphasis mine.)

The only difference in the two sections, as to who shall make the transfer, is that as to elementary budgets the clerk is authorized upon her own initiative to order the transfer, while in the high school budget the board of trustees must order the clerk to notify the treasurer to make the transfer.

It will be noted the only authority to cause a transfer is placed in the clerk or the board of trustees, and upon notice by the clerk to the treasurer, it is made mandatory on the treasurer to make the transfer. There is no provision in either statute for the approval of such transfer by the board of budget supervisors; such board not having the authority could not authorize anyone else to exercise such authority. Without statutory provision, the budget board or county superintendent would have no such authority.

As to your second question, Section 1263.15, Revised Codes of Montana, 1935, applicable to high school budgets, is controlling. It authorizes the board of trustees to order the clerk to notify the treasurer to make the transfer. The only restriction is that a transfer may be made only when it appears that there is a surplus or excess in one fund and a deficiency in another, and that no transfers may be made between any items of the elementary budget to those of the high school budget. Therefore, the board of trustees would have the right to transfer from the item of teachers' salaries in the high school budget, when there is a surplus in such item,

to any other item in such budget where there is a deficit.

As to your third question, whatever power or check the board of school budget supervisors or the county superintendent as clerk of said board may have over the spending of budget items by a board of school trustees before the current school year is completed, if any, must be found in the provisions of the budget act.

Section 1019.2, Revised Codes of Montana, 1935, designates the board of county commissioners as the board of school budget supervisors and the county superintendent as clerk of such board. Under Section 1019.13, Revised Codes of Montana, 1935, the budget board has authority to make changes or corrections in the elementary budget deemed necessary or proper in any item or amount contained in Sections I, II, or III of any budget, either by eliminating or striking out any item or amount, or by increasing or reducing the amount proposed to be expended for any item, and when it appears to the budget board that any item is in excess of the amount actually required to be expended for such item, the board must reduce such amount to the amount actually required. However, this section then provides as follows:

" . . . provided, that the budget board **must**, before making any such change or correction in the preliminary budget of any district, afford the trustees and clerk of the district an opportunity to be heard thereon, and provided further, that if at any such hearing the trustees of any district and the budget board are unable to agree on the amount to be expended for any such item, the board of trustees by majority vote of all members of the board, may finally fix and determine such amount, **and the amount so fixed cannot thereafter be changed by the budget board.**" (Emphasis mine.)

Section 1263.13, Revised Codes of Montana, 1947, provides that at the meeting of the board of school budget supervisors held on the fourth Monday in July, such board shall have the power "to make any change or corrections it may deem necessary or proper in any item or amount con-

tained in any high school budget, either by eliminating or striking out any item or amount contained therein, or by increasing or reducing the amount of any item, and when it appears to the budget board that the amount proposed to be expended for any item, as shown by a preliminary high school budget, is in excess of the amount actually required to be expended for such item, the board must reduce such amount to the amount actually required to be expended therefor." This section then provides:

" . . . provided, however, that in the event the board of budget supervisors shall reject any such budget in whole or in part it shall cause the reasons for its rejection to be spread upon its minutes and a copy thereof to be immediately furnished to the chairman of the board of trustees which has submitted the budget, and provided further, that **no final action on said budget shall be taken by the said board of budget supervisors until after a hearing thereon shall have been had**, which hearing shall be held by said board of budget supervisors on the first Monday in August after said budgets shall have been submitted. At said hearing the chairman of the board of budget supervisors, or a member of that body appointed by him; the chairman of the board of trustees of the district or county high school submitting such budget, or a member of the board appointed by him; and the county superintendent of schools shall constitute a board of review. This board of review shall have the power and it shall be its duty to consider such rejected budget and to arrive at a budget by a majority vote which shall not be subject to further review." (Emphasis mine.)

It is therefore clear that, as to elementary budgets, the board of trustees has the final say as to the amount to be included in such budget, while in the high school budgets, the board of budget supervisors, subject to review by the board of review, composed of the chairman of the budget board, chairman of the board of trustees of the district submitting the rejected budget and the county superintendent of schools, has the final say.

However, it must be noted that the above procedure has to do only with the making and adopting of the budgets and not to expending of the amounts finally adopted in the several budgets. The expenditure of the budgetary itemized amounts is exclusively within the power of the board of trustees, subject only to the restrictions of the budget act. Neither the board of budget supervisors, nor the county superintendent as such, or as the clerk of said board, is given any statutory authority to supervise or control expenditures.

It is therefore my opinion:

1. A board of school budget supervisors has no authority to assign to a county superintendent of schools the power to approve or disapprove transfer of school district budget items.
2. A board of trustees has authority to transfer surplus money in the teachers' salary item to another item in which there is a deficiency.
3. After the adoption of the final budget, expenditures are solely within the authority of the board of school trustees, subject only to the provisions of the budget act, and no authority exists in the board of budget supervisors or the county superintendent to supervise or control expenditures.

Sincerely yours,
R. V. BOTTOMLY.