

**Opinion No. 29**

**Schools—Funds, Apportionment of—  
School Districts, Reimbursement for**

**Transportation—Computing Period,  
In Making Apportionment—Levy.**

- Held:** 1. Section 1204, Revised Codes of Montana, 1935, as amended by Chapter 272, Laws of 1947, does not apply to the apportionment of funds realized from Section 1202, Revised Codes of Montana, 1935, for the school year 1946-1947.
2. Funds apportioned under Section 1204, Revised Codes of Montana, 1935, as amended by Chapter 272, Laws of 1947, are distributed to the elementary school only, and attendance in the elementary schools serves as the basis for such apportionment.
3. Reimbursement to elementary schools for their transportation budgets is made from the funds realized from the levy provided by Section 1202, Revised Codes of Montana, 1935, as amended by Chapter 273, Laws of 1947, before the apportionment of such funds under Section 1204, Revised Codes of Montana, 1935, as amended.
4. The period to be used in computing the "average number belonging" in determining the apportionment of funds for elementary schools under Section 1204, Revised Codes of Montana, 1935, as amended by Chapter 272, Laws of 1947, is the previous school year.

April 24, 1947

Miss Elizabeth Ireland  
State Superintendent of  
Public Instruction  
State Capitol Building  
Helena, Montana

Dear Miss Ireland:

You have requested my opinion concerning Section 1204, Revised Codes of Montana, 1935, as amended by Chapter 272, Laws of 1947, and have asked the following questions:

1. Does Section 1204, as amended, apply to the apportionment of the common school tax for the last half of the school year 1946-1947?

2. Are the funds apportioned to both elementary schools and high schools under Section 1204, as amended?

3. Does Section 1204, as amended, affect the reimbursement to school districts for transportation from the proceeds of the levy authorized by Section 1202, Revised Codes of Montana, 1935, as amended?

4. What period shall be used in computing the "average number belonging" in determining the apportionment provided in Section 1204, as amended?

Section 1204, Revised Codes of Montana, 1935, as amended by Chapter 272, Laws of 1947, provides:

"All school moneys apportioned by county superintendents of common schools shall be apportioned to the several districts in proportion to the average number of pupils belonging. In computing the average number belonging in each school district, the sum of the aggregate attendance and the aggregate days absence shall be divided by the number of days school is in session in the school or schools of the district, provided, however, that in computing the aggregate days absence, pupils absent more than three days shall be dropped from the rolls and shall not be considered as belonging."

In answering your first question concerning the application of the amendment to the present school year, it is necessary to consider the results which would follow if it were made immediately effective.

The preliminary budget for elementary schools is prepared and adopted in June and the final budget is prepared and adopted in July. Under Section 1019.12, Revised Codes of Montana, 1935, the tax levies for each school district are fixed not later than the second Monday in August. The school district budget and all appropriations are based upon the estimated revenue, Section 1019.4, Revised Codes of Montana, 1935, a portion of which is the funds realized from the levy provided in Section 1202, Revised Codes of Montana, 1935, as amended by Chapter 273, Laws of 1947. If the method of computing the amount available for

each school district were altered during the current school budget the result would be in many school districts that they would be unable to meet their contractual obligations with teachers, bus drivers, and other persons with whom the districts had entered into contracts in anticipation that the method of apportionment of revenue would not be changed.

The Montana Constitution prohibits the impairment of contracts by legislation as Section 11 of Article III provides:

"No ex post facto law nor law impairing the obligation of contracts, or making any irrevocable grant of special privileges, franchises, or immunities, shall be passed by the legislative assembly."

Taking away all or a part of the means of the payment of the school district's contracts would impair the obligation of the contracts. This principle is recognized in 12 Am. Jur. 21, where the text states:

"When ever the law is so changed that the means of enforcing the duty imposed by the contract are materially impaired, the obligation of the contract no longer remains the same. Therefore, a Constitution or a statute impairs the obligation of a contract if it prevents enforcement, or seriously interferes with the enforcement of the contract. While it is undoubted that the legislature may make changes in the remedy, it is necessary that the contract be left with the same force and effect, including the substantial means of enforcement, which existed when it was made."

Your second question is answered by reference to the budget acts for both elementary and high schools. Section 1019.4, Revised Codes of Montana, 1935, provides a form for the estimate of the revenue for elementary schools. One of the items is the "County Apportionment, six (6) to eight (8) mill levy," which is the levy provided by Section 1202, Revised Codes of Montana, 1935. Chapter 273, Laws of 1947, has increased the levy to eight to ten mills, but the reference would be the same.

The estimate for high schools found in Section 1263.3, Revised Codes of Montana, 1935, does not contain any reference to the six to eight mill levy, but does provide for the apportionment of the county high school levy. Section 1263.11, Revised Codes of Montana, 1935, as amended, provides for a county wide high school levy and this is a special levy for high school purposes which takes the place for high schools of the levy provided in Section 1202, as amended. The statutory method for financing high schools does not contemplate that funds realized from Section 1202, as amended, shall be available for their budgets. Chapter 272, Laws of 1947, which amended Section 1204, Revised Codes of Montana, 1935, does not alter the disposition of the funds apportioned, but merely changes the method of computation of amount distributed to each district.

Your third question is answered by Opinion No. 180 Volume 20, Report and Official Opinions of the Attorney General, which held that:

"School districts maintaining elementary schools, or which provide transportation to a school in another district, are entitled to reimbursement from the fund provided by the tax levy authorized by Section 1202, Revised Codes of Montana, 1935, in the amount of one-third of the actual cost of transportation prior to the apportionment of the fund under the provisions of Section 1204, Revised Codes of Montana, 1935."

The fact that Section 1202 has been amended by Chapter 273, Laws of 1947, and Section 1204 has been amended by Chapter 272, Laws of 1947, does not alter the application of the above quoted opinion.

Your fourth question concerning the period to be used in the computation of the "average number belonging" must be answered by reference to the practical matters which affect the determination of daily attendance of the pupils.

In *State v. Millis*, 81 Mont. 86, 261 Pac. 885, our Court said:

"Statutes are to be construed so as best to effectuate the object of the legislature."

As was observed before in this opinion, budgets are made for school districts in June and July and information concerning the amount of funds from the levy provided in Section 1202, as amended must be available at that time. Therefore, the apportionment by the county superintendent must be based on the records of attendance of the previous school year. If the apportionment were based on the attendance for the current school year, there would be no records available on which to compute the amount distributed.

Section 1078, Revised Codes of Montana, 1935, makes it the duty of all teachers to file an annual report with the county superintendent on or before the 10th day of July after the close of the school year. This report would supply the basis for the computation of attendance and is the only adequate report which would meet the need for the determination of the apportionment of the funds to the various elementary districts.

It is, therefore, my opinion:

1. Section 1204, Revised Codes of Montana, 1935, as amended by Chapter 272, Laws of 1947, does not apply to the apportionment of funds realized from Section 1202, Revised Codes of Montana, 1935, for the school year 1946-1947.
2. Funds apportioned under Section 1204, Revised Codes of Montana, 1935, as amended by Chapter 272, Laws of 1947, are distributed to the elementary schools only, and attendance in the elementary schools serves as the basic for such apportionment.
3. Reimbursement to elementary schools for their transportation budgets is made from the funds realized from the levy provided by Section 1202, Revised Codes of Montana, 1935, as amended by Chapter 273, Laws of 1947, before the apportionment of such funds under Section 1204, Revised Codes of Montana, 1935, as amended.
4. The period to be used in computing the "average number belonging" in determining the apportionment of funds for elementary schools under Section 1204, Revised Codes of Mon-

tana, 1935, as amended by Chapter 272, Laws of 1947, is the previous school year.

Sincerely yours,  
R. V. BOTTOMLY,  
Attorney General