

**Held:** Free Textbooks must be furnished in elementary schools, but there may be no special textbook levy as Section 1199, Revised Codes of Montana, 1935, was repealed by Chapter 146, Laws of 1931, the elementary school budget act. Section 1198, Revised Codes of Montana, 1935, was not affected by passage of the budget act. Therefore, the item for free textbooks should be included under item 13 of Section 1 of the budget.

July 12, 1947

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

Dear Miss Ireland:

You have requested my opinion as to whether a special levy for textbooks may be made for elementary schools under the provisions of Section 1199, Revised Codes of Montana, 1935.

Section 1198, Revised Codes of Montana, 1935, requires all school districts to furnish free textbooks in all schools. Section 1199 authorizes a special tax which will raise an amount not in excess of \$3.50 per pupil for free textbooks if the general fund of a school district is insufficient for that purpose. Section 1199 was enacted in 1913 and last amended in 1925. However, the budget system for elementary schools was adopted in 1931, and Section 1019.3 includes textbooks as one of the items of the general fund expenses.

Section 1019.14 of the budget act prohibits expenditures in excess of the final amounts fixed in the general fund of the budgets.

The estimated revenues for each school district is made by the county superintendent under the provisions of Section 1019.4 and the enumeration of the sources of revenue does not include a textbook levy. It therefore is to be concluded that the budget act, having been enacted subsequent to Section 1199, the latter act was im-

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pliedly repealed and textbooks must be considered as any other item of the general fund.

Also, Section 1019.7 limits the revenue for the general fund to the estimated revenue as shown by the county superintendent's estimate, and any extra levy voted by the qualified electors of the district. This section does not recognize the textbook levy as a possible source of income and by the omission eliminates it as an extra levy. A like conclusion was reached in Opinion No. 199, Volume 20, Report and Official Opinions of the Attorney General in regard to a special levy for textbooks for high schools.

It is, therefore, my opinion that free textbooks must be furnished in elementary schools, but there may be no special textbook levy as Section 1199, Revised Codes of Montana, 1935, was repealed by Chapter 146, Laws of 1931, the elementary school budget act. Section 1198, Revised Codes of Montana, 1935, was not affected by passage of the budget act. Therefore, the item for free textbooks should be included under item 13 of Section 1 of the budget.

Sincerely yours,  
R. V. BOTTOMLY  
Attorney General