

Opinion No. 39

**Schools and School Districts—Budget—Reserve Fund—Expenditure—
Chapter 131, Laws of 1945—Chapter 161, Laws of 1947.**

Held: Under the provision of Chapter 131, Laws of 1945, as amended by Chapter 161, Laws of 1947, the funds transferred into the deferred maintenance fund cannot be spent for new building construction and equipment, but the expenditure thereof is limited to the maintenance and repair of buildings and the maintenance, repair and replacement of school equipment."

July 22nd, 1949.

Mr. Melvin E. Magnuson
County Attorney
Helena, Montana

Dear Mr. Magnuson:

You have requested my opinion on the following matter:

"We have been asked whether, under the provisions of Chapter 131, Laws of 1945, as amended by Chapter 161, of Laws of 1947, funds transferred into a deferred maintenance fund can be spent for new building construction during the next fiscal year or whether the expenditure of such funds is limited to the maintenance and repair of buildings and the maintenance, repair and replacement of equipment in such buildings."

Chapter 131, Session Laws of 1945 is entitled:

"An Act Authorizing the Creation by Boards of School Trustees of Reserve Funds for Elementary Schools, District High Schools, and County High Schools; Providing for the Accumulating of Post-War Funds, for Maintenance, Repair and Replacement of School Equipment; Prescribing the Manner in Which Such Funds May Be Accumulated; Providing the Time When and the Purposes for Which Such Funds May Be Expended; and the Time During Which This Act Shall Be in Effect."

Section 1 creates a special reserve fund for post-war "maintenance and repair of buildings and the maintenance, repair and replacement of equipment. . . ."

I call attention to Section 3 of the act which states in part:

"Beginning with such first day of July the moneys in such reserve funds may be expended for the maintenance, repair and replacement of school equipment, **but for no other purpose. . . .**" (Emphasis supplied.)

Further, Section 4 of the act states that during the life of the act none of the moneys in any such reserve fund may at any time be transferred to any other fund or funds and provides for transfers within the fund itself.

The amendment of the act in Chapter 161, Laws of 1947, made no substantial change so far as this opinion is concerned but established the date July 1, 1947 as the date of commencement of expenditure of the reserve fund.

The act itself very definitely limits the expenditure of the reserve fund to specific purposes. Nowhere in that enumeration of purposes does there appear any reference to new building construction and equipment. Moreover, the Legislature was extremely explicit in its limitation of the expenditure only to those specific purposes enumerated.

Section 4 of Chapter 131, Laws of 1945 states that no transfer to other purpose shall be made during the life of the act and that upon its ceasing to have force and effect any unexpected amounts may be transferred to the general elementary or high school fund by order of the Board of Trustees.

The act is to remain in effect, according to Chapter 161, Laws of 1947, which amended portions of Chapter 131, Laws of 1945, "for a period of three (3) years after July 1, 1947, but no longer."

In Volume 22, Opinions of the Attorney General, Opinion Number 10, Attorney General Bottomly, in discussing the purpose of an act similar to the one under consideration stated:

"It was undoubtedly the purpose of the Legislature in enacting Chapter 69, Laws of 1945, to provide post-war funds for the purpose

therein set forth, to take up the slack of employment they felt would be in existence upon the termination of the war emergency. I think this is a fair deduction from the reading of the title and the act as a whole."

"Also, it was felt repair work and bridge work, and other construction during the war years would be neglected because of the lack of funds and the impossibility of getting materials."

At the end of that opinion, he stated that what he had said in regard to Chapter 69, Laws of 1945, applied also to Chapter 131, Laws of 1945.

Thus it is clear that the fund is not intended to add new capital assets to existing school plants, but to repair and renew those assets which exist and could not be properly maintained or replaced due to the exigencies of emergency, war-time shortages.

It is therefore my opinion that under the provisions of Chapter 131, Laws of 1945, as amended by Chapter 161, Laws of 1947, the funds transferred into the deferred maintenance fund can not be spent for new building construction and equipment, but the expenditure thereof is limited to the "maintenance and repair of buildings and the maintenance, repair and replacement of school equipment."

Very truly yours,
ARNOLD H. OLSEN,
Attorney General.