

**Opinion No. 86****Schools and School Districts—Post-War Reserve Fund, Transfer of**

**Held: Any surplus remaining in the reserve fund for post-war maintenance, repair and equipment created by Sections 75-3710 through 75-3714, Revised Codes of Montana, 1947, MUST be transferred to school general fund after July 1, 1950.**

January 31, 1950.

Miss Mary M. Condon  
State Superintendent of Public Instruction  
State Capitol  
Helena, Montana

Dear Miss Condon:

You have asked if it is mandatory that the balance remaining in the post-war reserve fund for maintenance and repair of buildings of school districts be transferred to the general fund of the school districts of this State.

Chapter 131, Session Laws of 1945, as amended by Chapter 161, Session Laws of 1947, as now contained in Sections 75-3710 through 75-3714, Revised Codes of Montana, 1947, created and defined the use of the reserve fund. Section 75-3713, *supra*, is as follows in part:

" . . . and provided further that immediately following the date when this act shall cease to be of any force or effect, if there shall remain in any such reserve fund any amount unexpended and unappropriated such amount **may**, by order of the Board of trustees be transferred to the general elementary school fund . . . or to the district high school fund . . . or to the County high school fund . . ." (Emphasis mine.)

The date of the termination of the act is fixed at July 1, 1950, as Section 75-3714, *supra*, reads as follows:

"This act shall be in full force and effect from and after its passage and approval and shall remain in effect for a period of three (3) years after July 1, 1947, but no longer."

As the reserve fund is dependent for its existence on the life of Chapter 131, Session Laws of 1945, as amended, the expiration of the act would preclude any expenditure from the reserve fund. The reserve fund as such would lapse and not be continued as an item in the budget for the next fiscal year.

Section 75-1714, Revised Codes of Montana, 1947, formerly Section 1019.14, Revised Codes of Montana, 1935, which is a part of the elementary school budget act, limits expenditures to the detailed appropriations fixed by the budget. A like provision is found in the high school budget act. It is a reasonable conclusion that as the authority for the deferred maintenance reserve fund has been taken away, the provisions of the budget law, referred to above, will control.

The Supreme Court of Montana has made numerous rulings upon the question of whether the word "may" in a statute can be interpreted as "shall" or "must" and the general rule is now well established that such interpretation is to be made when it is determined that the Legislature intended the word to be used in a mandatory sense. *Durland v. Prickett*, 98 Mont. 399, 39 Pac. (2d) 652; *State ex rel. McCabe v. District Court*, 106 Mont. 272, 76 Pac. (2d) 634; *Hansen v. City of Havre*, 112 Mont. 207, 114 Pac. (2d) 1053, 135 A.L.R. 1278. In the Hansen case the court held as follows on page 217 of the Montana Reports:

"Defendants contend that the word "may" as used in Section 5277.3 means "must" or "shall". We think this contention must be sustained. We have often held that "may" means "must" or "shall", depending upon the apparent Legislative intent. (Citing Cases)."

Since any balance remaining in the post-war reserve fund could not be expended after the expiration of the act unless such balance was transferred to one of the enumerated school funds, the provisions of Section 75-3713, *supra*, that any amount unexpended and unappropriated "may" be transferred must be interpreted to mean "must" be transferred. It cannot be said that it was the intent of the Legislature to permit such funds to lie idle after the act creating the post-war reserve fund has expired.

It is, therefore, my opinion that any surplus remaining in the reserve fund for post-war maintenance, repair and equipment created by Sections 75-3710 through 75-3714, Revised Codes of Montana, 1947, **must** be transferred to the school general fund after July 1, 1950.

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