

Opinion No. 7.

Public School Interest and Income
Fund—Public School Permanent
Fund—State Farm Loan
Sinking Fund.

HELD: Ninety-five per cent of moneys in the state farm loan sinking fund shall be transferred to the public school interest and income fund and five per cent shall be transferred to the permanent school fund at the time and in the manner provided in Chapter 191, Laws of 1949, and Section 5, Article XI of the Montana Constitution.

February 20, 1953.

Mr. W. P. Pilgeram
Commissioner of State Lands &
Investments
Capitol Building
Helena, Montana

Dear Mr. Pilgeram:

You have requested my opinion concerning the distribution of the funds in the state farm loan sinking fund.

The state farm loan sinking fund is the result of the earnings and the liquidation of the lands which were acquired by the State as a result of foreclosure of mortgages on farm land. The mortgages were authorized by Chapter 124, Laws of 1917, and the rate of interest on funds invested in the farm loans was fixed at six per cent by Section 5 of the Act. The loans were made from the permanent school fund and the loans resulted in a loss to the fund. Section 3 of Article XI of the Montana Constitution safeguards the school fund by making it the duty of the State to guarantee the fund against loss and/or diversion. The legislature in recognition of this constitutional obligation enacted Chapter

127, Laws of 1935, now Sections 75-3728—75-3733, R. C. M., 1947, which provided for the payment of loss of principal to the school fund of \$4,250,625.95 and interest on this amount at the rate of two per cent payable to the interest and income fund. Chapter 191, Laws of 1949, amended Sections 75-3729 and 75-3733, R. C. M., 1947, by increasing the reimbursement of interest to the total amount of interest contracted to be paid on the farm mortgage loans.

The question to be answered is to which fund shall the payments be credited; shall the payments be made to the permanent school fund or the public school interest and income fund?

There are inconsistencies in the two statutes as to which funds the repayments are to be made. Section 75-3729, supra, prior to amendment, provided:

“ . . . The state hereby promises and agrees to **repay to the public school permanent fund** the said sum of four million two hundred fifty thousand six hundred twenty-five and 95/100 dollars (\$4,250,625.95) as of January 1, 1935, **together with** interest on the balance remaining from time to time unpaid at the rate of two per centum (2%) per annum . . . ” (Emphasis supplied.)

The amendment to this section stated that repayment would be made “to the public school permanent fund all the interest payments lost to said public school permanent fund.” While the amendment and the above quoted portion of the statute provided that the reimbursements and payments were to be made to the public school permanent fund, yet it is Section 75-3733, R. C. M., 1947, as amended by Chapter 191, Laws of 1949, which contains the specific directions as to the transfer of funds. This section directs that “. . . the state treasurer shall transfer from the state farm loan sinking fund to the public school interest and income fund a sum equal to the interest then accrued and unpaid . . . figured at two per centum (2%) per annum, . . . ” The amendment to Section 75-3733, supra, which authorized payments of interest above the two per cent states in part that “. . . the state treasurer shall . . . transfer from the

state farm loan sinking fund to the appropriate public school funds, pursuant to Section 5, of Article XI of the Constitution, all moneys in the state farm loan sinking fund . . . ”

Section 5 of Article XI defines the manner in which rentals and interest payments received through the investments of the permanent school fund shall be distributed. In this section the Constitution provides that five per cent of the moneys collected shall be returned to the permanent school fund and the remaining ninety-five per cent shall be “. . . apportioned annually to the several school districts . . . ” The section thereby in legal effect created the public school interest and income fund, through which fund school moneys are actually distributed. Chapter 191, Laws of 1949, is the last expression of the Legislature in regard to the disposition of these funds, and is controlling.

It is therefore my opinion that ninety-five per cent of moneys in the state farm loan sinking fund shall be transferred to the public school interest and income fund and five per cent shall be transferred to the permanent school fund at the time and in the manner provided in Chapter 191, Laws of 1949, and Section 5, Article XI of the Montana Constitution.