

Opinion No. 44

**SCHOOLS AND SCHOOL DISTRICTS; Funds; extra-curricular funds,
investment of not authorized—SCHOOLS AND SCHOOL DISTRICTS;**

Funds; investment of extra-curricular funds not authorized—SCHOOLS AND SCHOOL DISTRICTS; Funds; extra-curricular funds are trust funds—SCHOOLS AND SCHOOL DISTRICTS; Funds; expenditures from extra-curricular funds authorized only for purpose for which fund set up—SCHOOLS AND SCHOOL DISTRICTS; Funds; extra-curricular funds, administered by Board of Trustees—SCHOOLS AND SCHOOL DISTRICTS; Fees; extra-curricular activity fees should be charged only in amount needed for one school year—Section 75-1632, RCM, 1947—Section 75-1632.1, RCM, 1947

- Held:**
1. It is not a proper purpose of public school extra-curricular activities to accumulate funds for investment.
 2. That the interest realized from investments heretofore made, should be distributed to each contributing funds on a pro rata basis.
 3. That extra-curricular school activity funds should be administered by the Board of Trustees of the school and the student government association.

November 16, 1959

Mr. R. E. Towle
 State Examiner
 State Capitol
 Helena, Montana

Dear Mr. Towle:

You have requested my opinion concerning the propriety of the purchase of bonds by the student association of a high school. You also asked what disposition should be made of the interest from bonds which have in fact been purchased. You advise me that the funds so invested were realized from assessments and fees paid into the fund by student organizations and also from profits of student activities.

The only statutory references to funds which are designated "extra-curricular funds" are found in Section 75-1632, RCM, 1947, as amended, and Section 75-1632.1, RCM, 1947, wherein it is provided that it is the duty of the trustees to provide for a system of bookkeeping and annual auditing of the funds. The auditing may be done by your office or by a qualified accountant employed by the district.

The assessment of fees from students for outside activities is recognized as being proper notwithstanding our schools are "free."

(47 Am. Jur. 405). Such funds which are accumulated are school funds and are impressed with a trust. In 47 Am. Jur. 363, the text states:

"Where the law provides for separate funds for distinct purposes, each fund is earmarked with a trust for the particular purpose for which it is raised, and they cannot be commingled or used interchangeably."

It is a logical conclusion that a fund accumulated by assessments of the students or student activities should be used for the specific purpose or purposes for which the charge was made and the building up of a surplus for investment purposes, however laudable the type of investment, is a variance from the authorized purpose or purposes for which it may be expended. An analogous situation is that found in *Rogge vs. Petroleum County*, 107 Mont. 36, 80 Pac. (2d) 380, wherein it was held that taxes should be levied by a county only in an amount sufficient for the current year and to meet the needs of the current budget. Applying this rule to the facts you present it must be concluded that fees should not be charged students in excess of the amount necessary to conduct the extra-curricular activities of any one school year.

The foregoing is not to be construed as prohibiting an entering class of students from accumulating a fund to be expended by that class in a subsequent year for a trip or some other group activity. Each year's portion of the fund would be a valid purpose for that year.

If in fact investments have been made, the interest from the investments should be distributed on a pro rata basis to each of the funds which contributed to the money which was used for the purchase of the investments.

As our statutes are silent as to the exact method of administering extra-curricular funds, it would appear to be reasonable that the trustees and the student government body should agree on the expenditure of the money being limited, however, by the purpose or purposes of the trust.

It is, therefore, my opinion:

1. It is not a proper purpose of public school extra-curricular activities to accumulate funds for investment.
2. That the interest realized from investments heretofore made, should be distributed to each contributing fund on a pro rata basis.
3. That extra-curricular school activity funds should be administered by the Board of Trustees of the school and the student government association.

Very truly yours,
FORREST H. ANDERSON
Attorney General