

Opinion No. 49

**SCHOOLS AND SCHOOL DISTRICTS; Budgets; Transportation
Budgets; cash balance used to reduce ensuing year's budget—
SCHOOLS AND SCHOOL DISTRICTS; Transportation; Budg-
ets; cash balance used to reduce ensuing year's budget—
Section 75-3403, RCM, 1947—Section 75-3407, RCM,
1947—Section 75-3413, RCM, 1947 and Section
75-3414, RCM, 1947**

Held: The cash balance on hand at the end of a fiscal year in the elementary transportation budget should be used to meet or reduce the amount contributed by the district, county or state or any or all of the three depending on the source of the accumulated cash balance. If the cash balance results from more than one source, then the allocation should be made in the ensuing budget on a proportionate basis so as to give a proper reimbursement.

December 21, 1959

Miss Harriet Miller
Superintendent of Public Instruction
Capitol Building
Helena, Montana

Dear Miss Miller:

You have requested my opinion concerning what use should be made of the cash balance on hand in the transportation budget of an elementary school. You advise me that many school districts have

cash on hand sufficient to meet most or all of the requirements of the transportation budget for the ensuing school year.

Section 75-3413, RCM, 1947, provides that each school district "shall be entitled to reimbursement from the state's public school general fund" in an amount of one-third of the schedule provided for transportation. This same section also provides that each school district providing transportation for elementary pupils "shall be entitled to reimbursement from the county common school fund" of one-third of the schedule. Section 75-3414, RCM, 1947, requires the adoption of a transportation budget and places on the district the obligation, after deducting all estimated receipts including reimbursements, to furnish the balance of the transportation budget from a tax on the property of the school district.

While the foregoing pertaining to the elementary transportation budget is silent as to any cash balances remaining at the end of a fiscal year, such is not the fact in regard to high school transportation budgets as Section 75-3414, RCM, 1947, specifically states cash balances shall be taken into account so as to reduce the amount to be raised by a tax levy.

It is against the policy of the law in Montana to raise taxes faster than the money is likely to be needed and in the absence of statutory authority a tax cannot be levied for the sole purpose of accumulating funds. Such was held in the case of *Rogge vs. Petroleum County*, 107 Mont. 36, 80 Pac. (2d) 380, wherein it was also held that county commissioners in preparing a budget must take into consideration the amount of money already available in each fund for which a levy is made. All of the funds which make up the transportation budget are moneys realized from taxes and two-thirds of each elementary budget comes from two tax sources which are not a direct tax on the district alone. However, the principle was announced in *Rogge v. Petroleum County*, *supra*, that taxing authorities should and it is their duty to include cash on hand in computing the amount to be raised by taxes for a fiscal year.

Cash on hand in the transportation budget cannot be transferred to the general fund of a school district and this was so held in Opinion No. 42, Volume 22, Report and Official Opinions of the Attorney General.

In computing the cash on hand at the end of a fiscal year, the depreciation reserve for purchase of replacement buses as authorized in Section 75-3403, RCM, 1947, should not be included in ascertaining the cash balance on hand.

Cash balances may result from overpayment by the state or the county. Most frequently such balances will result from the district levy being fixed in August for an estimate of a greater number of pupils than are actually transported in the school year. It would be inequitable

to use moneys received from the district to relieve the county's or state's contribution in the next transportation budget.

It is, therefore, my opinion that the cash balance on hand at the end of a fiscal year in the elementary transportation budget should be used to meet or reduce the amount contributed by the district, county or state or any or all of the three depending on the source of the accumulated cash balance. If the cash balance results from more than one source, then the allocation should be made in the ensuing budget on a proportionate basis so as to give a proper reimbursement.

Very truly yours,
FORREST H. ANDERSON
Attorney General