

Opinion No. 58**SCHOOLS AND SCHOOL DISTRICTS; Budgets; Federal Monies; elementary district budgets, how included—Public Law No. 874, Opinion 46, Volume 24, Report and Official Opinions of the Attorney General, Sections 75-1632 and 75-1723, RCM, 1947**

- Held:** 1. Federal monies received under Public Law No. 874 may be used in the 30% permissive area above the foundation program in the elementary budgets to relieve the local tax burden; provided, however, that such monies may not be used above the amount that a 15 mill levy would produce unless approved by the electors.
2. Federal monies received under Public Law 874 may be used in all independent budgets which are supported by local tax levies.

March 28, 1960

Mr. Gordon T. White
County Attorney
Valley County
Glasgow, Montana

Dear Mr. White:

You have requested my opinion concerning the use of money received under Public Law 874, which is paid to school districts to relieve the impact of increased enrollment due to federal installations or the reduction in taxable property due to such installations. You ask in particular in regard to elementary budgets:

1. May federal monies received under Public Law No. 874 be used to the full 30% extent in the permissive area of the general fund budget?
2. May the federal monies received under Public Law No. 874 be used in all current operating budgets of a school district?

In opinion No. 46, Volume 24, Report and Official Opinions of the Attorney General, it was held:

"The funds received by the school districts from the Federal Government under Public Law 874, 81st Congress, shall not be used by the school districts in addition to the appropriations found in the budgets of the school districts, but shall be used to relieve the tax burdens due to the increased enrollment resulting from federal installations in the districts."

The above holding precludes school districts from using the money received from the Federal Government under Public Law 874 to increase spending power above the appropriations in the budget. It

recognizes the paramount purposes of the federal law to give relief to the taxpayers of a school district when there is an increased tax burden due to the federal installations.

Prior to the school year of 1958-59, school districts which had large tracts of Indian Reservation land received financial aid because of the low taxable valuation under the so-called Johnson-O'Malley Act. Now such school districts must first apply for federal aid from the moneys made available under Public Law 874, although there may be additional entitlement under the Johnson-O'Malley Act.

If the funds received from the Federal Government in lieu of taxes are used to meet requirements of the foundation program, before county and state aid is received, there will be a resulting reduction in the county apportionment and state aid with a diminished relief to the local taxpayers. Such a use would defeat in great measure the principal purpose of Public Law 874. It follows as a consequence that such monies must not be used to reduce the district's eligibility for county and state equalization aid, but rather must be used to reduce any district levies, except the original 5 mill levy, required for the support of the General Fund Budget and other independent budgets financed in whole or in part by district levies.

Subsection 23 of Section 75-1632, Revised Codes of Montana, 1947, grants the power to the board of trustees "to provide foods, cooks, janitor services and equipment for school lunches when deemed advisable by the board." There is no statute which authorizes a specific levy for the school lunch program but school monies may be expended for this purpose in the general fund budget. Public Law 874 money could be used in the lunch program in the general fund budget and thus relieve local taxpayers with respect to general fund items.

In Opinion No. 46, Volume 24, Report and Official Opinions of the Attorney General, it was also stated:

"As these federal funds are to be used to relieve the local taxpayers from the increased load, the money should be allocated to all of the funds in the budget, including the independent budgets which are supported by levies on the property in the district, in the proportionate amount each bears to the whole."

The above quoted answers your second question and gives a broad method of relieving the local tax burden, however, it is my opinion that there need be no apportionment in the use of the funds. Federal money received under Public Law 874 may be used to meet the 30% permissive increase of the general fund budget but under Section 75-1723, R.C.M., 1947, the levy for the permissive increase is limited to 15 mills and the excess must be approved by the electors of a school district at an election called for such purpose. As a result of this limitation, even though there is federal money available to finance in full the 30% permissive increase, an approving vote must be had to exceed that amount which 15 mills would produce if levied. This section

also contains an exception to the requirement of an approving vote based on federal and state requirements, but this latter exception applies only to money received under an act containing a criterion necessitating spending more than the amount 15 mills will produce and so certified by the trustees and approved by the county superintendent and attached to the budget.

It is, therefore, my opinion:

1. Federal monies received under Public Law No. 874 may be used in the 30% permissive area above the foundation program in the elementary budgets to relieve the local tax burden provided, however, that such monies may not be used above the amount that a 15 mill levy would produce unless approved by the electors.
2. Federal monies received under Public Law No. 874 may be used in all independent budgets which are supported by local tax levies.

Very truly yours,
FORREST H. ANDERSON
Attorney General