

Opinion No. 17

FOUNDATION PROGRAM; Junior college; computation — SCHOOLS AND SCHOOL DISTRICTS; Budgets; junior college — SCHOOLS AND SCHOOL DISTRICTS; High Schools; junior college, budget for—SCHOOLS AND SCHOOL DISTRICTS; High Schools; junior college, foundation program—SCHOOLS AND SCHOOL DISTRICTS; High Schools; junior college, tuition charges— SCHOOLS AND SCHOOL DISTRICTS; Junior college, budget for—Sections 75-3612, 75-4409 and 75-4518.1, Revised Codes of Montana, 1947.

- Held:** 1. That the computation of the foundation program for a junior college shall be made according to the schedule and at the rates found in Section 75-3612, RCM, 1947, as amended, and the ANB so determined shall be separate from and independent of the determination of the ANB of the accredited high school of which the junior college is a department.

2. **The foundation program of a junior college may be increased by the permissive levy authorized in Section 75-4518.1, RCM, 1947, independent of, and without being restricted by the permissive increase which may be levied for the high school of which the junior college is a department.**
3. **The tuition charges which may be imposed, as provided in Section 75-4409, RCM, 1947, may be anticipated to increase the authorized budget of the junior college above the foundation program and permissive increase without the necessity of a vote of the qualified electors.**

June 23, 1961

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

Dear Miss Miller:

You requested my opinion concerning the laws applicable to, and the maximum amounts of, junior college budgets.

You call my attention to Opinion No. 24, Volume 23. You also quoted a letter written by an administrative assistant in the State Department of Public Instruction on June 14, 1949, which stated that:

1. The foundation program for junior colleges will be calculated at the rate set out in Section 75-3612, RCM, 1947, as amended.
2. That the amount determined above shall be added to the foundation program of the high school upon which total will be given county and state equalization aid.
3. That a junior college may increase its foundation program by the permissive increase allowable by law for high schools which computation would be independent of, and not preclude a permissive increase for the high school where the junior college is located.
4. That the tuition charge of \$125 per pupil, authorized by law for junior colleges, may be added to the general fund budget of the junior college and thereby increase the total of such budget.

You asked the following specific questions:

- "1. In determining the foundation program in accordance with Section 75-3612, RCM, 1947, as amended, should
 - a. the ANB of the junior college be added to the ANB of the high school to obtain a single ANB from which one foundation program is calculated for the high school and junior college combined; or

- b. should the ANB of the junior college and the ANB of the high school be used separately to determine two separate foundation programs, one for the high school and one for the junior college?
2. In determining the permissive levy
 - a. if the ANBs of the junior college and the high school are combined to obtain a single ANB and a resultant single foundation program, should the permissive amount (in accordance with Section 75-4518.1, RCM, 1947) be based solely on the single foundation program?
 - b. if the junior college and the high school are permitted separate foundation programs, should each separate foundation program be entitled to a separate permissive amount in accordance with Section 75-4518.1, RCM, 1947, as amended?
3. May tuition charges authorized in Section 75-4409, RCM, 1947, be anticipated and such anticipated tuition charges used above the foundation program and permissive amount to increase the total authorized budget of the junior college without a vote?"

The statutes authorizing the establishment of junior colleges were enacted as Chapter 158, Laws of 1939, which preceded in time the adoption of our present method of financing schools which is referred to as "the foundation program" and is found in Chapter 36 of Title 75, RCM, 1947, as amended.

A junior college is defined in Section 75-4401, RCM, 1947, in the following language:

"A 'junior college' is hereby defined to be a public school established as provided in this act, in connection with accredited high schools for the purpose of providing one or more two year courses beyond those of the four year high school."

The above quoted clearly ties the junior college to an accredited high school, but it does not specifically state the degree of their unification.

The financing of a junior college and the preparation of its budget is authorized in Section 75-4409, RCM, 1947, which reads as follows:

"The county high school board or district high school board shall be authorized to include in their budget a sufficient sum to operate and maintain the junior college departments as herein provided, the amount of such budget to be left to their determination. Such boards are also empowered in their discretion, when they shall deem it necessary, to charge tuition at a maximum rate of not exceeding one hundred twenty-five and no/100 (\$125.00) dollars per year for attendance at junior colleges established under the terms of this act."

The above quoted statute is ambiguous as to whether the budget for a junior college is an integral part of the high school budget or

an independent budget. This is apparent when that part of Section 75-4409, RCM, 1947, which authorizes the trustees to include in their budget "a sufficient sum to operate and maintain the junior college departments as herein provided, the amount of such budget to be left to their determination" is considered. The first part of this phrase suggests that the junior college budget is incorporated in the high school budget with the limitations the law places on high school budgets. However, the second portion of the phrase specifically grants a discretion to the trustees as to the amount of the junior college budget. Linking the budget of the junior college to that of the high school makes it clear that the same sources of revenue will be available to each. By allowing a discretion as to the amount of the budget it must be concluded that, if the trustees so desire, the financing of a junior college may be done by using the maximum amounts authorized for a high school. In Opinion No. 24, Volume 23, Report and Official Opinions of the Attorney General, this office held that "The cost of maintenance and operation of Junior Colleges must be included in the County or District High School Budget." This opinion did not answer your specific questions as to the computation of the foundation program, and independent permissive levy for the junior college and the use of the tuition authorized in Section 75-4409, RCM, 1947. A short time after the issuance of Opinion No. 24, Volume 23, the administrative assistant in the office you now hold wrote a letter, the substance of which has been set out above in this opinion, which specifically ruled on the questions you submitted. The letter referred to is an administrative interpretation of the law and has been followed by junior colleges in the preparation of their budgets for more than ten years. Our Supreme Court, in the case of *Miller Insurance v. Porter*, 93 Mont. 567, 20 Pac. (2d) 643, said:

"It is the settled rule that the practical interpretation of an ambiguous or uncertain statute by the executive department charged with its administration is entitled to the highest respect, and, if acted upon for a number of years, will not be disturbed except for very cogent reasons."

By following this rule of statutory interpretation and recognizing the fact the legislature has met several times since the administrative interpretation on June 14, 1949, was made, it must be concluded that the method of financing the budgets of junior colleges should not be changed by a new interpretation of the applicable statutes.

It is, therefore, my opinion:

1. That the computation of the foundation program for a junior college shall be made according to the schedule and at the rates found in Section 75-3612, RCM, 1947, as amended, and the ANB so determined shall be separate from and independent of the determination of the ANB of the accredited high school of which the junior college is a department.

2. The foundation program of a junior college may be increased by the permissive levy authorized in Section 75-4518.1, RCM, 1947, independent of, and without being restricted by the permissive increase which may be levied for the high school of which the junior college is a department.
3. The tuition charges which may be imposed, as provided in Section 75-4409, RCM, 1947, may be anticipated to increase the authorized budget of the junior college above the foundation program and permissive increase without the necessity of a vote of the qualified electors.

Very truly yours,

FORREST H. ANDERSON

Attorney General