

Opinion No. 4

SCHOOLS AND SCHOOL DISTRICTS; Budgets; distribution of state funds obtained from Public School Classroom Unit Assistance Fund—SCHOOLS AND SCHOOL DISTRICTS; Districts; Funds; distributed to elementary school not to be transferred to high school—SCHOOLS AND SCHOOL DISTRICTS; Districts; Finances; state aid funds cannot be expended by school unless appropriated in school budget—SCHOOLS AND SCHOOL DISTRICTS; Districts; Finances; school appropriations greater than actual income will permit school to register warrants — STATE SUPERINTENDENT OF PUBLIC INSTRUCTION; Powers; may promulgate rules defining “classroom units” and “regular classroom teachers” — Sections 16-2604, 75-1705, 75-1710, 75-1713.1, 75-1723, 75-1727, 75-3616, 75-4505 and 75-4518.1, Revised Codes of Montana, 1947—Chapter 245, Laws of 1961.

- Held:**
- 1. A board of trustees in preparing the preliminary budget for its school may anticipate the funds to be realized from the Public School Classroom Unit Assistance Fund notwithstanding the fact the effective date of Chapter 245, Laws of 1961, is July 1, 1961, and may extend the amount to be expended by the amount so anticipated if used in the budget above the permissive increase.**
 - 2. Funds distributed under Chapter 245, Laws of 1961, may be used without an election in lieu of any district levy in the general fund providing the 5 mill levy is made or may be used above the authorized permissive increase with a resulting increase of spending power in the budget.**
 - 3. The State Superintendent of Public Instruction may make such rules and definitions concerning “classroom units” and “regular classroom teachers” as necessary for the administration of the act, provided however, that fulltime superintendents, principals, and guidance personnel cannot be considered as classroom teachers in computing classroom units.**

4. **Funds distributed to a school district under Chapter 245, Laws of 1961, must be designated for the use of the general fund of the elementary school budget, or high school budget. The funds received by reason of classroom units in elementary schools shall not be used in a high school budget and conversely.**
5. **Funds received for the use of a budget in excess of the appropriations of the budget must be used in the next ensuing budget as cash on hand and may not be used to increase spending power in the ensuing budget. If appropriation in a budget exceed the funds actually received under Chapter 245, Laws of 1961, warrants may be issued and registered. Such warrants shall be paid from the first money available in the general fund.**

April 24, 1961

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

Dear Miss Miller:

You requested my opinion concerning Chapter 245, Laws of 1961, which establishes the Public School Classroom Unit Assistance Fund. You submitted eight assumptions concerning the statute which, for the sake of brevity and convenience, I have reduced to the following questions:

1. May school district trustees, in preparing preliminary budgets prior to July 1, 1961, the effective date of Chapter 245, Laws of 1961, anticipate funds to be received under this law?
2. May the funds to be distributed under this act be used to increase the amount of general fund expenditures in excess of the foundation Program plus the permissive increase authorized in Sections 75-1713.1 and 75-4518.1, RCM, 1947?
3. What authority does the State Superintendent of Public Instruction have in establishing criteria for determining the meaning of "regular classroom teachers" and "classroom units"?
4. Shall the funds granted to a school district be separately determined and distributed for the elementary budget and the high school budget?
5. If the funds received by a school district or county high school exceed or are less than the amount estimated in the budget, what will be the effect on the ensuing budget?

In answering the first question, it is necessary to consider Section 7 of Chapter 245, Laws of 1961, which provides:

"This act shall be in force and effect for the period from July 1, 1961, to June 30, 1963, inclusive."

While this provision would preclude the distribution of any money prior to July 1, 1961, it would not prevent school officers from anticipating monies to be received in preparing preliminary budgets. Under the budget laws, Sections 75-1705 and 75-4505, RCM, 1947, the trustees must adopt preliminary budgets on the fourth Monday of June for the next ensuing school year. On the fourth Monday of June, 1961, Chapter 245, Laws of 1961, will not be effective. However, the trustees in preparing preliminary budgets are justified in anticipating the revenue to be received under this Act, as this statute is a potential law at the present time. Our Supreme Court, in the case of *Broadwater v. Kendig*, 80 Mont. 515, 261 Pac. 264, quoted the following with approval:

"That a statute or constitutional provision may have a potential existence, but which will not go into actual operation until a future time, is familiar law."

The second question asks if the funds received under the act may be used above the Foundation Program and permissive increase with the result that there will be an increased spending power in the general fund. Section 5 of Chapter 245, which applied to the question, reads as follows:

"School districts and county high schools may use such funds to reduce any levy necessary for the general fund except the 5 mill levy provided for in Section 75-1723, Revised Codes of Montana, 1947, as amended, or may budget for and use such funds above the permissive area provided by law, without the requirement of an election as provided for in section 75-3801, Revised Codes of Montana, 1947. Such funds shall not be construed to be included within 'all other regular sources of revenue required to be used to finance the foundation program as provided in Sections 75-1723 and 75-4516.1', under the provisions of Section 75-3616, Revised Codes of Montana, 1947, as amended."

Under the provisions of this section the trustees, in preparing the budget, may use the funds in two ways. First, the monies may be used in the general fund budget to reduce any district levy other than the 5 mill levy provided in Section 75-1723, RCM, 1947, as amended; and second, the funds may be used above the permissive area without the necessity of an election approving such usage. If the funds are used as a substitute for a district tax within the general fund budget, there will not be an increase in spending power under the budget. The fact the funds are used in lieu of a local tax is an acknowledgment of the application of the limits of the budget law. However, the use of the funds above the permissive area, which is usually referred to as the voted levy area, will increase the spending power of the school district or

county high school as it is specifically provided that the amount to be received under Chapter 245, Laws of 1961, shall not be limited by Section 75-3616, RCM, 1947, which restricts the allocation from state funds to fifty per cent of the foundation program.

The waiver of any requirement of an election will permit the use of such funds in any part of the budget without the approval of the voters.

The third question requests my opinion concerning the authority of the State Superintendent of Public Instruction to make rules regarding the precise meaning of the phrases "classroom unit" and "regular classroom teachers" so that the funds may be properly distributed.

Section 3 of Chapter 245 makes it the duty of the State Superintendent of Public Instruction on the first day of October to determine the number of classroom units. This section also provides "such determination shall be made on the basis of one classroom unit for each regular classroom teacher, excluding full time superintendent, principals, and guidance personnel." These standards for classroom units and classroom teachers are general in terms and do not furnish enough detail. For example, the allocation of funds for teachers who instruct in specialized classes such as music and home economics for only a portion of a school day must be fixed by appropriate rule. Also, superintendents who teach a portion of the day, are by the provisions of this act, to be considered.

Section 1 of Chapter 245 established the fund "to be administered by the State Board of Education." Section 3 of Chapter 245 grants to the State Superintendent of Public Instruction the power to ascertain the number of classroom units in the following language:

"The state superintendent of public instruction, on the first day of October of each year, shall determine the number of classroom units in each school district and county high school of the state. Such determination shall be made on the basis of one classroom unit for each regular classroom teacher, excluding full time superintendent, principals and guidance personnel."

From the above quoted, it is reasonable to assume that if the State Superintendent is to determine the number of classroom units in each school district and county high school, then by necessity, the State Superintendent has the authority to adopt rules and regulations to carry out the provisions of the act. That an officer has implied power from an express statutory grant is recognized in *Guillot v. State Highway Commission*, 102 Mont. 149, 56 Pac. (2d) 1072, where our Supreme Court quoted with approval the following:

"In addition to powers expressly conferred upon him by law, an officer has by implication such powers as are necessary for the due and efficient exercise of those expressly granted, or such as

may be fairly implied therefrom. But no power will be implied other than those which are necessary for the effective exercise and discharge of the powers and duties expressly conferred.' "

A reading of the act as a whole leads to the conclusion that the fourth question should be answered in the affirmative. The monies distributed by the State Superintendent for each school district should be earmarked for the budget of the school, whether elementary or high school, which maintains the classroom units justifying the distribution. The failure to so designate might result in a diversion of funds to a school budget not entitled to receive the same. The purpose of the Act is to assist each school district in proportion to the number of classroom units that such number bears to the total of teaching units in the State.

The fifth question in effect asks if Chapter 245, Laws of 1961, changes the existing budget laws which provide for annual budgets. It is my opinion that the Act does not contemplate any amendment of the budget laws. Under the existing law, if there is additional money above the amount appropriated in the elementary budget, such cannot be expended as Section 75-1727, RCM, 1947, prohibits the payment of any warrants in excess of the appropriations as fixed by the budget. Such additional funds realized from the classroom unit Assistance Fund on hand at the end of the fiscal year must be used in the ensuing budget as cash on hand as provided in Section 75-1710, RCM, 1947. If the funds realized from this source are less than the amount appropriated in the budget, warrants may be issued and registered as provided in Section 16-2604, RCM, 1947. Such warrants shall be paid from the first money available in the general fund. There are comparable statutes in the high school budget law and the same results will follow.

It is, therefore, my opinion:

1. A Board of trustees in preparing the preliminary budget for its school may anticipate the funds to be realized from the Public School Classroom Unit Assistance Fund notwithstanding the fact the effective date of Chapter 245, Laws of 1961, is July 1, 1961, and may extend the amount to be expended by the amount so anticipated if used in the budget above the permissive increase.

2. Funds distributed under Chapter 245, Laws of 1961, may be used without an election in lieu of any district levy in the general fund providing the 5 mill levy is made or may be used above the authorized permissive increase with a resulting increase of spending power in the budget.

3. The State Superintendent of Public Instruction may make such rules and definitions concerning "classroom units" and "regular classroom teachers" as necessary for the administration of the act, provided however, that full time superintendents, principals, and guidance personnel cannot be considered as classroom teachers in computing classroom units.

4. Funds distributed to a school district under Chapter 245, Laws of 1961, must be designated for the use of the general fund of the elementary school budget, or high school budget. The funds received by reason of classroom units in elementary schools shall not be used in a high school budget and conversely.

5. Funds received for the use of a budget in excess of the appropriations of the budget must be used in the next ensuing budget as cash on hand and may not be used to increase spending power in the ensuing budget. If appropriations in a budget exceed the funds actually received under Chapter 245, Laws of 1961 warrants may be issued and registered. Such warrants shall be paid from the first money available in the general fund.

Very truly yours,
FORREST H. ANDERSON
Attorney General