

Opinion No. 32

FOUNDATION PROGRAM; Distribution, method of—SCHOOLS AND SCHOOL DISTRICTS; Foundation program, distribution —STATE BOARD OF EDUCATION; State Equalization aid, distribution—Section 75-3616, R.C.M., 1947.

HELD: In ordering distribution of state equalization aid, the State Board of Education must determine the need of a school district for such aid by the school district's budget and not by the actual receipts of the district.

May 18, 1964

State Board of Education
State Capitol
Helena, Montana

Gentlemen:

At the April meeting of the State Board of Education, it was pointed out that interest and income monies paid to school districts were larger than had been anticipated in the 1963-64 school budgets. Because of this, you wish to know if state equalization aid monies should be proportionately reduced.

An opinion prepared by private counsel and distributed to the board states:

“ . . . the State Board of Education has responsibility for the administration and distribution of state aid, and that, in making distribution, it should order payment of only so much thereof as is required to fully finance the foundation programs in the various counties of the state.”

I agree with this conclusion. However, the legal problem presented is how to determine the amount of state equalization aid that “is required to fully finance the foundation programs in the various counties of the state.” Section 75-3616, R.C.M., 1947 provides:

“Distribution of funds—reports required. After July 1, 1949, the state board of education shall, in the months of December and April of each year, order disbursements of state equalization aid within the limitations hereinafter specified and upon the basis of reports made to the state superintendent of public instruction, to any county treasurer who controls the fund of any school district or joint school district which, **as established by its budget duly approved for the current school year**, will not have sufficient funds to maintain the foundation financial program after receipt by it of its apportioned share of interest and income moneys, if any, and from the basic county levies provided for by section 75-3706 and section 75-4516.1.

“Each order of the state board of education for disbursements of state equalization aid, shall be certified to the state auditor and state treasurer, whereupon the state auditor shall draw his warrants in accordance with such order and the state treasurer shall pay the same to the several county treasurers for credit to the school districts as provided in such order.” (Emphasis supplied).

This statute clearly provides that the amount of state equalization aid required to fully finance the foundation program of a school district must be determined by the budget of the school district and not by its actual receipts, which may be larger or smaller than the budgeted estimates. Appropriations of and for school districts, like every other governmental body in the State of Montana, are made on the basis of budgeted or anticipated income and not on the basis of actual receipts.

This method of distributing state equalization aid has been followed by the Board of Education since the enactment of the foundation program in 1949 and has been left unchanged by the seven legislatures which have met since that date. In **Miller Insurance Agency v. Porter**, 93 Mont. 567, 20 P. 2d 643, the Montana Supreme Court stated:

“The contemporaneous and long-continued practice of officers required to execute or take special cognizance of a statute is strong evidence of its true meaning. And if the legislature by its inaction has long sanctioned a certain construction, language apparently unambiguous may be given by the courts such construction, especially if the usage has been public and authoritative.”

See also **McBride v. Reardon**, 105 Mont. 96, 69 P. 2d 975; **State ex rel Ebel v. Schye**, 130 Mont. 537, 305 P. 2d 350; **United States v. Jackson**, 280 U.S. 183, 50 S. Ct. 143, 74 L. ed. 361; **United States v. Farrar**, 281 U.S. 624, 5 S. Ct. 425, 74 L. ed. 1078, 68 A.L.R. 892.

It is therefore my opinion that, in ordering distribution of state equalization aid, the State Board of Education must determine the

need of a school district for such aid by the school district's budget and not by the actual receipts of the district.

Very truly yours,

FORREST H. ANDERSON
Attorney General