

**SCHOOLS AND SCHOOL DISTRICTS - Finances; Investment of funds; Power of trustees. SCHOOLS AND SCHOOL DISTRICTS - Power of trustees; Investment of funds. Sections 16-2618, 75-5941, 75-6805 and 75-6806, R.C.M. 1947.**

**HELD: Trustees of any school district enumerated in section 16-2618 (8), Revised Codes of Montana, 1947, may direct the county treasurer to invest any moneys of such school district in savings or time deposits in any state or national bank or banks insured by the F.D.I.C. and located within the county, provided any other applicable provisions of section 16-2618 (8), R.C.M. 1947, are met; and such deposits need not be ratably distributed as provided in section 16-2618 (4), R.C.M. 1947.**

December 29, 1972

Mr. Leif B. Erickson  
Deputy County Attorney  
Lewis and Clark County  
Helena, Montana 59601

Dear Mr. Erickson:

This is in response to your request for a clarification of **33 Opinions of the Attorney General**, no. 6, relating to the investment of school district moneys. Your question is stated as follows:

“Whether the trustees of school districts, after determining that moneys of the school district should be invested in savings or time deposits of a state or national bank insured by the FDIC, may select only one bank in the county for investment of the funds, or whether they are required to direct such funds to be invested ratably among all the banks in the county pursuant to section 16-2618, R.C.M. 1947.”

**33 Opinions of the Attorney General**, no. 6, stated in part:

“School district funds are not subject to the same requirements as the other public moneys described in section 16-2618.”

The primary question raised in **33 Opinions of the Attorney General**, no. 6, was whether those funds must be ratably distributed among all banks in the county pursuant to subsection (4) of section 16-2618, Revised Codes of Montana. A letter opinion subsequent to **33 Opinions**

of the Attorney General, no. 6, to the state examiners, dated September 25, 1969, stated that the provisions of section 16-2618, supra, regarding ratable distribution were applicable to funds invested by school districts. However, subsequent legislation must now be taken into account in interpreting subsection (8) of section 16-2618, supra.

Subsection (8) of section 16-2618, supra, provides:

“Whenever in the judgment of the trustees of any common school district, high school district, or county high school it would be advantageous to invest any money of such school or school districts in savings or time deposits in a state or national bank insured by the F.D.I.C., or in direct obligations of the United States government, payable within one hundred eighty (180) days from the time of investment, such governing body may in its discretion direct the county treasurer to make such investments. All interest collected on such deposits or investments shall be credited to the fund from which the money was withdrawn, provided that nothing in this act shall be interpreted to conflict with section 16-2050.”

As interpreted heretofore, subsection (8) of section 16-2618, supra, has been read as harmonizing with the other provisions of that section. However, amendments by the 1971 legislative assembly to the school laws of Montana make it clear that subsection (8) is to be read as separate and distinct from the other provisions of section 16-2618, supra, when dealing with the investment of school district funds. It provides an exception to the procedure the county treasurer must follow.

Section 75-6805, R.C.M. 1947, provides in part:

“The county treasurer of each county shall:

\* \* \*

(9) invest the moneys of any district as directed by the trustees of the district but in accordance with subsection (2) of section 16-2050 or subsection (8) of section 16-2618, R.C.M., 1947, whichever is applicable; . . .”

Section 75-6806, R.C.M. 1947, provides in part:

“The trustees of each district shall have the sole power and authority to transact all fiscal business and execute all contracts in the name of such district. . . . In conducting the fiscal business of the district, the trustees shall:

\* \* \*

(4) invest any money of the district in accordance with subsection (2) of section 16-2050 or subsection (8) of section

16-2618, R.C.M., 1947, whichever is applicable, whenever in the judgment of the trustees such investment would be advantageous to the district; . . .”

The above-quoted sections enacted by the legislature in 1971 make it clear that only the provisions of subsection (8) of section 16-2618, supra, limit the authority of the trustees of any common school district, high school district or county high school to direct investment of the school's moneys. The trustees not only can direct the county treasurer to invest moneys of the district held by him, but can specify any particular bank or banks within the county, which otherwise meet the qualifications of subsection (8) of section 16-2618, supra, as the recipient of any savings or time deposits of the school district. The funds need not be ratably distributed among all banks in the county as is the case with other moneys dealt with in section 16-2618, supra.

In directing the investment of a school district's moneys the trustees have a fiduciary responsibility to obtain an investment with terms most advantageous to the school district. The provisions of section 75-5941, R.C.M. 1947, make obligatory the proper administration and utilization of all moneys of the district. It would be a breach of the duty placed on trustees to obtain less than the best terms available to them when directing the county treasurer to invest the school district's moneys.

**THEREFORE, IT IS MY OPINION** that subsection (4) of section 16-2618, supra, dealing with the ratable distribution of public moneys, does not apply to school districts, and the trustees of any school district may direct the county treasurer to invest any moneys of such school district in savings or time deposits in any state or national bank or banks insured by the F.D.I.C. and located within the county, as provided in section 16-2618 (8), supra.

Very truly yours,

ROBERT L. WOODAHL  
Attorney General