

**VOLUME NO. 35****Opinion No. 44**

**INSURANCE — Schools, property and liability insurance; SCHOOLS AND SCHOOL DISTRICTS — Purchase of property and liability insurance. Sections 75-5939, 75-8212 and 82-4309, R.C.M. 1947.**

- HELD:**
- 1. The annual property tax permitted under section 82-4309 may be used to pay premiums on liability insurance, but may not be used to pay premiums on property insurance of school districts.**
  - 2. A fund separate from the general fund is created when a property tax is levied pursuant to section 82-4309 to pay for insurance premiums.**
  - 3. Section 75-5939 has not been specifically repealed but has been superseded and incorporated into the Montana Comprehensive State Insurance Plan and Tort Claims Act, sections 82-4301, et seq.**
  - 4. A school district may pay for property and liability insurance out of the general fund, subject to the maximum levies allowed by law.**

December 19, 1973

Mrs. Dolores Colburg  
Superintendent of Public Instruction  
State Capitol  
Helena, Montana 59601

Dear Mrs. Colburg:

You have requested my opinion concerning the effect of sections 82-4306 and 82-4309, Revised Codes of Montana, on the funding and payment of premiums for property insurance required under section 75-8212, and the liability insurance permitted under section 75-5939. Specifically, you have asked the following four questions:

1. May the annual property tax permitted under section 82-4309, R.C.M. 1947, be used to pay the premiums on insurance required under section 75-8212, and permitted under section 75-5939, as well as premiums on insurance permitted under section 82-4306?
2. Did the legislature intend to create a fund separate from the general fund for the payment of premiums on all insurance by the last clause in section 82-4309, R.C.M. 1947?
3. If it did, does this repeal the second sentence of section 75-5939, R.C.M. 1947?
4. May a school district pay the premiums on insurance out of the general fund or only from the monies from the levy authorized under section 82-4309, R.C.M. 1947?

Montana law requires, at section 75-8212, R.C.M. 1947, school district trustees to insure district property. That section provides:

The trustees of any district shall have the authority and it shall be their duty to insure any or all **real and personal property of the district.** (Emphasis supplied)

Trustees of a school district are also permitted to purchase liability insurance under section 75-5939:

The trustees of any district may purchase **insurance coverage** for the district, trustees, and employees **against liability for the death, injury, or disability of any person or damage to property.** If such insurance is purchased, the trustees shall pay the insurance premium cost from the general fund. The provisions of section 40-4402, R.C.M., 1947, shall apply to the provisions of this section. (Emphasis supplied)

Section 40-4402, R.C.M. 1947, referred to in the above-quoted section, provides that the defense of sovereign immunity is not available when a political subdivision is insured for liability.

The Montana Constitution, 1972, at Article II, section 18, has abolished the doctrine of sovereign immunity:

**State subject to suit.** The state, counties, cities, towns, and all other local governmental entities shall have no immunity from suit for injury to a person or property. This provision shall apply only to causes of action arising after July 1, 1973.

In order to protect governmental entities from suit for actions by employees, the 1973 Montana legislature enacted a comprehensive state insurance plan and tort claims act. This act, section 82-4302, et seq., defines a school district as a political subdivision. Section 82-4306 then provides that "all political subdivisions of the state shall have authority to procure insurance under this act." The act further provides, at section 82-4309:

Notwithstanding any provisions of law to the contrary, all political subdivisions shall have authority to levy an annual property tax in the amount necessary to pay the premium for insurance as herein authorized, even though as a result of such levy the maximum levy as otherwise restricted by law is exceeded thereby; provided, that the revenues derived therefrom may not be used for any other purpose.

It is a basic principle of statutory construction that the intention of the legislature is controlling. Section 93-401-16, R.C.M. 1947; **Dunphy v. Anaconda Co.**, 151 M. 76, 438 P.2d 660. In construing legislative intent, statutes must be read and considered in their entirety and legislative intent may not be gained from the wording of any particular section or sentence, but only from a consideration of the whole. **Home Bldg. & Loan v. Bd. of Equalization**, 141 M. 113, 375 P.2d 312.

Section 82-4302 of the Montana comprehensive state insurance plan and tort claims act, defines the following:

(5) "Personal injury" means any injury resulting from libel, slander, malicious prosecution, or false arrest, any bodily injury, sickness, disease or death, sustained by any person **and caused by an occurrence, for which the state may be held liable.**

(6) "Property damage" means injury or destruction to tangible property, including loss of use thereof, **caused by an occurrence, for which the state may be held liable.**

(7) "Claim" means any claim against a governmental entity, for money damages only, which any person is legally entitled to recover as damages because of personal injury or property damage **caused by a negligent or wrongful act or omission committed by any employee of the governmental entity while acting within the scope of his employment,** under circumstances where the governmental entity, if a private person, would be liable to the claimant for such damages under the laws of the state of Montana. (Emphasis supplied)

These sections indicate the legislature's intent to provide insurance coverage only for occurrences for which the state may be held liable. Insurance protecting state property from damages and destruction by extraneous forces, such as fire and wind, are not within the scope of this act.

The property tax authorized under section 82-4309 thus may be used to pay premiums for liability insurance such as is permitted by section 75-5939. However, the property tax authorization in section 82-4309 is limited "to pay the premium for insurance as herein authorized" and does not allow a tax to pay

insurance premiums on real and personal property of school districts as provided for in section 75-8212.

In referring to the property tax authorized for payment of insurance premiums, the last phrase of section 82-4309 states, "... provided, that the revenues derived therefrom may not be used for any other purpose." The legislature has thus created a fund, separate and distinct from the general fund, for the payment of premiums for insurance specified in the comprehensive state insurance plan and tort claims act.

Although section 75-5939 and its reference to payment of insurance premiums from the general fund has not been specifically repealed, it has been effectively superseded by and incorporated into the comprehensive state insurance plan and tort claims act, section 82-4301, et seq. Where two statutes are inconsistent, the last in point of time supersedes the earlier one. **State ex rel. Hughes v. State Board of Land Commissioners**, 137 Mont. 510, 353 P.2d 331.

As no specific fund is established by section 75-8212, a school district must pay premiums for insurance on real and personal property of the district from the general fund. (Section 75-6901 provides in part: "The purpose of the general fund shall be to finance those general maintenance and operational costs of a district not financed by other funds established for special purposes in [Title 75].") Although section 82-4309 authorizes a property tax levy to pay insurance premiums for occurrences for which the school district may be held liable, that section does not restrict the payment of such premiums to monies from the levy. If there is sufficient revenue in the district general fund, these funds can be used to purchase liability insurance without a special property tax levy as authorized under section 82-4309. Thus, premiums for liability insurance may also be paid from the general fund, subject to the maximum levies allowed by law (section 75-6901, supra).

**THEREFORE, IT IS MY OPINION:**

1. The annual property tax permitted under section 82-4309, R.C.M. 1947, may be used to pay premiums on liability insurance such as formerly permitted by section 75-5939 and now provided for under section 82-4301, et seq., but may not be used to pay premiums for property insurance under section 75-8212, R.C.M. 1947.
2. The legislature, pursuant to section 82-4309, R.C.M. 1947, authorizing a property tax, did create a fund separate from the general fund for the payment of insurance premiums for occurrences for which the state may be held liable.
3. Section 75-5939, R.C.M. 1947, and reference to the payment of premiums from the general fund has not been specifically repealed, but has been superseded and incorporated into section 82-4301, et seq., R.C.M. 1947.

4. A school district must pay for property insurance out of the general fund, and may also pay for liability insurance from the general fund subject to the maximum levies allowed by law.

Very truly yours,

ROBERT L. WOODAHL  
Attorney General