

VOLUME NO. 36

Opinion No. 106

BOARD OF PUBLIC EDUCATION—Administration of gifts to School for Deaf and Blind; STATE FINANCE—Regulation of gifts to School for Deaf and Blind; Article VIII, Section 13, Article X, Section 10, 1972 Montana Constitution; Sections 79-201, 79-306, 79-308, et seq., 79-410, 59-415, 79-1401, 80-114, R.C.M. 1947.

- HELD:**
1. Section 80-114 gives the board of public education complete control over the ultimate disposition of gifts to the School for the Deaf and Blind.
 2. Pending such disposition, Article X, Section 10, and the statutes governing state finance require that cash and similar gifts to the school be deposited with the state treasurer.
 3. Section 80-114, read in light of Article X, Section 10, permits the board of public education to utilize gifts deposited with the state treasurer whenever its discretion is so moved, without a specific appropriation.
 4. If the board of public education chooses to invest any gifts, investment must be done pursuant to the unified investment program set forth in section 79-308 et seq.
 5. Article X, Section 10, requires that gifts to the school be used only for the school's benefit, and thereby prohibits any diversion, direct or indirect, of such gifts.

November 16, 1976

Mr. Floyd J. McDowell, Superintendent
Montana School for the Deaf and Blind
Great Falls, Montana 59401

Dear Mr. McDowell:

You have requested my opinion concerning the management of gifts received by the Montana School for the Deaf and Blind. According to information you have supplied, these gifts are largely unrestricted cash donations, but occasionally include stocks, bonds, and interests in real property. You state that in the past the board of public education, through the superintendent of the school, has possessed and managed such gifts on its own under the authority vested in the board by Title 80, chapter 1. For example, section 80-114 provides:

The state board of education shall have the power and it shall be its duty to receive, hold, manage, use, and dispose of any and all real and personal property made over to such board, or to the state of Montana, by purchase, gift, devise, bequest, or otherwise acquired, and the proceeds, interest and income thereof, for the use and benefit of said school.

While this statute, if read alone, arguably supports the established practice by the board, in my judgment all the relevant provisions of the law taken together contemplate that gifts to the school be managed in conjunction with the state treasury system.

Foremost is Article X, Section 10, of the 1972 Montana Constitution. It states:

The funds of the Montana university system and of all other state institutions of learning, from whatever source accruing, shall forever remain inviolate and sacred to the purpose for which they were dedicated. The various funds shall be respectively invested under such regulations as may be provided by law, and shall be guaranteed by the state against loss or diversion. The interest from such invested funds, together with the rent from leased lands or properties, shall be devoted to the maintenance and perpetuation of the respective institutions.
(Emphasis added)

The constitution itself mandates a unified investment program for such funds, which has been implemented by the legislature. See Article VIII, Section 13, and sections 79-308 et seq. In essence the unified investment program makes investment of these funds the exclusive duty of the board of investments.

Title 79, relating to state finance, contains several statutes bearing on the problem at hand. Section 79-201 provides:

The state treasurer shall be the custodian of all moneys and securities of the state unless otherwise expressly provided by law, and it is the duty of the state treasurer:

1. To receive and account for all moneys belonging to the state, not expressly required by law to be received and kept by some other person.

Note that section 80-114 does not expressly make the board of public education the custodian (mere keeper) of gifts to the school, even though their ownership and responsibility over them are absolute.

Section 79-306 states:

1. The state treasurer is designated the treasurer of every state agency and institution.

2. All state agencies and institutions shall deposit daily **all** moneys, credits, evidences of indebtedness, and securities either in banks, building and loan associations or savings and loan associations located in the city or town in which the agencies and institutions are situated if there is a qualified bank, building and loan association or

savings and loan association in the city or town as designated by the state treasurer with the approval of the board of investments, or with the state treasurer. (Emphasis added)

Section 79-1401 further states:

All moneys received from the investment of grants of a state institution and all money received from the leasing of lands granted to a state institution shall, at the close of each calendar month, be deposited with the state treasurer of Montana for each of such institutions, to the credit of the federal and private revenue fund.

The two just-quoted sections speak for themselves and require no interpretation. **Dunphy v. Anaconda Co.**, 151 Mont. 76, 80, 438 P.2d 660 (1968).

Cash gifts, income from gifts of real property, securities, and the like should therefore be deposited with the state treasurer. The Treasury Fund Structure Act has created the federal and private revenue fund, wherein such gifts are to be deposited. Section 79-410 provides:

There are in the state treasury only the following funds:

4. Federal and private revenue fund. The federal and private revenue fund consists of all expendable moneys deposited in the state treasury from federal or private sources, including trust income, which are to be used for the operation of state government.

You have expressed concern over the ready availability of gifts deposited with the state treasurer on account of section 79-415, which states:

1. Moneys deposited in the general fund, the earmarked revenue fund, and the federal and private revenue fund ... shall be paid out of the treasury only on appropriation made by law.

But it is unnecessary that such gifts be appropriated to the school by a formal act of the legislature at each session. The gifts are already appropriated to the school by virtue of section 80-114, which gives the board of education authority to "dispose of" such gifts. Their integrity is guaranteed. Article X, Section 10. A restriction to the letter of section 79-415 could infringe on a management prerogative of the board of public education—when to expend gifts to the school. To that extent the board's efficiency would be destroyed and the school's purpose hindered. Therefore, the board may utilize gifts deposited with the state treasurer whenever its discretion is so moved, and the treasurer may, without more, authorize payment of the same.

I emphasize the foregoing requires only that gift money be deposited with the state treasurer, and, if the board of public education chooses to invest any of it, that it be invested by the board of investments. Given the mandate of Article X, Section 10, that the funds of the institutions learning "shall forever remain inviolate and sacred to the purpose for which they are dedicated," no one must interfere with the purpose behind the gifts to the school. Thus, the legislature cannot lawfully "offset" these gifts by correspondingly reducing appropriations,

since in effect money dedicated to Peter would be diverted to fund Paul. Such action plainly defeats the intention of the school's benefactors, which the constitution protects.

Inasmuch as Title 79 only concerns accountability for cash and securities that are handled by state agencies, the board of public education may retain other kinds of gifts received by the school and manage them accordingly.

IT IS THEREFORE MY OPINION:

1. Section 80-114 gives the board of public education complete control over the ultimate disposition of gifts to the School for the Deaf and Blind.
2. Pending such disposition, Article X, Section 10, and the statutes governing state finance require that cash and similar gifts to the school be deposited with the state treasurer.
3. Section 80-114, read in light of Article X, Section 10, permits the board of public education to utilize gifts deposited with the state treasurer whenever its discretion is so moved, without a specific appropriation.
4. If the board of public education chooses to invest any gifts, investment must be done pursuant to the unified investment program set forth in section 79-308 et seq.
5. Article X, Section 10, requires that gifts to the school be used only for the school's benefit, and thereby prohibits any diversion, direct or indirect, of such gifts.

Very truly yours,
ROBERT L. WOODAHL
Attorney General