

VOLUME NO. 37

OPINION NO. 153

PUBLIC FUNDS - Use of school bus depreciation fund by school districts; SCHOOL DISTRICTS - Use of school bus depreciation fund; replacement of school buses and two-way radios; REVISED CODES OF MONTANA, 1947 - Sections 75-6801(1) and 75-6801(1).

HELD: The trustees of a school district may pay for the entire cost of replacement of a bus or radio from a bus depreciation reserve fund established under section 75-7024, R.C.M. 1947, if depreciation taken on the bus or radio since its acquisition has been credited to the reserve fund. In replacing any bus or radio which has contributed to the fund, the trustees are not limited to paying an amount from the fund which equals the accumulated depreciation credited to the fund on account of the replaced vehicle.

28 July 1978

Harold A. Fryslie, Director
Department of Community Affairs
Capitol Station
Helena, Montana 59601

Dear Mr. Fryslie:

You have requested my opinion concerning the following question:

May the trustees of a school district pay the entire cost of replacement of any school bus from a school bus depreciation fund established under section 75-7024, R.C.M. 1947, or is payment from the depreciation fund limited to an amount which is equal to the accumulated depreciation credited to the fund on account of the particular vehicle being replaced?

Section 75-7024, R.C.M. 1947, permits establishment of a bus depreciation reserve fund, providing:

Bus depreciation reserve. (1) The trustees of any district owning a bus or a two-way radio used for purposes of transportation, as defined in 75-7001, or for purposes of conveying pupils to and from school functions or activities may establish a bus depreciation reserve fund to be used for the replacement of such bus or radio.

(2) Whenever a bus depreciation reserve fund is established, the trustees may include in the district's budget, in accordance with the school budgeting provisions of this title, an amount each year that does not exceed 20% of the original cost of a bus or a two-way radio for such purposes. The annual revenue requirement for each district's bus depreciation reserve fund, determined within the limitations of this section, shall be reported by the county superintendent to the county commissioners on the second Monday of August as the bus depreciation reserve fund levy requirement for that district and a levy shall be made by the county commissioners in accordance with 75-6717.

(3) Any expenditure of bus depreciation reserve fund moneys shall be within the limitations of the district's final bus depreciation reserve fund budget and the school financial administration provisions of this title and may be made only for

the purchase of buses or radios to replace the buses or radios for which the bus depreciation reserve fund was created.

(4) Whenever the trustees of a district maintaining a bus depreciation reserve fund consider it to be in the best interest of the district to transfer any portion or all of the bus depreciation reserve cash balance to any other fund maintained by the district, it shall submit such proposition to the electors of the district. The electors qualified to vote at the election shall qualify under 75-6410, and the election shall be called and conducted in the manner prescribed by this title for school elections. If a majority of those electors voting at the election approve the proposed transfer from the bus depreciation reserve fund, the transfer is approved and the trustees shall immediately order the county treasurer to make the approved transfer.

The purposes of the section are clear and obvious. Creation of a reserve fund spreads the cost of replacement buses and radios over the lifetime of the equipment, ensures that funds are on hand to pay for replacement at replacement time, and alleviates the necessity for levying taxes for the entire cost of replacement in replacement years. Similarly, the purposes for which the reserve fund may be spent is explicit. Expenditures are limited to paying for the replacement of vehicles and radios which have contributed to the fund through depreciation charges, unless school district electors vote to transfer part or all of the fund to a different school district fund. Section 75-7024(3) and (4). However, section 75-7024 is silent concerning the mode or manner of replacement of buses and radios or expenditure of the reserve fund. The absence of such express directive gives rise to the present question.

Ordinarily, a governmental subdivision of the state has all those powers which arise by necessary implication from expressly granted powers, see Roosevelt County v. State Board of Equalization, 118 Mont. 31, 37, 162 P.2d 887 (1947); and where no mode or manner of exercise of an express power is provided, the governing body may adopt any reasonable method of discharging its powers, see State ex rel. Thompson v. Gallatin County, 120 Mont. 263, 270, 184 P.2d 998 (1947).

the purchase of buses or radios to replace the buses or radios for which the bus depreciation reserve fund was created.

(4) Whenever the trustees of a district maintaining a bus depreciation reserve fund consider it to be in the best interest of the district to transfer any portion or all of the bus depreciation reserve cash balance to any other fund maintained by the district, it shall submit such proposition to the electors of the district. The electors qualified to vote at the election shall qualify under 75-6410, and the election shall be called and conducted in the manner prescribed by this title for school elections. If a majority of those electors voting at the election approve the proposed transfer from the bus depreciation reserve fund, the transfer is approved and the trustees shall immediately order the county treasurer to make the approved transfer.

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Other than the requirement that the depreciation reserve fund be used to replace buses and radios for which the reserve fund was created, I find nothing in section 75-7024 which restricts the manner in which trustees expend moneys to replace vehicles which have contributed to the fund. The section creates a single reserve fund which is funded by accumulated depreciation taken on participating buses and radios. References in section 75-7024 to a bus depreciation reserve fund are in the singular and section 75-6801(1), R.C.M. 1947, which defines budgeted funds for school district financial purposes, similarly speaks in terms of a singular bus depreciation reserve fund. There is no requirement that depreciation amounts attributable to each bus or radio be segregated.

Depreciation reserve funds, such as the one here, customarily cover classes of equipment rather than specific items. Even within a class of equipment, individual items do not wear out at the same rate and cannot be replaced at identical intervals. Actual depreciation and necessary replacement of equipment cannot be accurately determined to occur at the precise time it has been fully depreciated. One piece of equipment within a class having a five year depreciation period may need replacement after four years, while another piece within the same class may endure seven years of use. Provision for a bus depreciation reserve fund was not intended to compel school districts to replace equipment on the last day of the last depreciation year, nor was it intended to forbid replacement of vehicles wearing out before such time. A depreciation reserve fund can thus account only for average depreciation and average intervals of replacement. Limiting payment from the bus depreciation reserve fund for replacement of a contributing bus or radio to an amount equal to the actual amount of depreciation taken on the old bus or radio would not promote the purpose of the fund. School districts may therefore pay for the cost of replacement of any bus or radio which contributes to the bus depreciation fund from the fund whether or not the bus has been fully depreciated.

This opinion is consistent with and confirms a letter opinion issued by Attorney General Forrest Anderson, dated September 30, 1963, and addressing the identical question. That opinion construed a depreciation reserve provision which is identical in material respects to the present provision and concluded:

***[T]here appears to be no intent to limit the expenditure of the reserve fund strictly to replacement of individual units in the amount their separate cost has contributed to the fund.

THEREFORE, IT IS MY OPINION:

The trustees of a school district may pay for the entire cost of replacement of a bus or radio from a bus depreciation reserve fund established under section 75-7024, R.C.M. 1947, if depreciation taken on the bus or radio since its acquisition has been credited to the reserve fund. In replacing any bus or radio which has contributed to the fund, the trustees are not limited to paying an amount from the fund which equals the accumulated depreciation credited to the fund on account of the replaced vehicle.

Very truly yours,

MIKE GREELY
Attorney General