

VOLUME NO. 37

OPINION NO. 34

SCHOOL DISTRICTS - Special education, allowable costs, rental of land and buildings; SPECIAL EDUCATION - School districts, allowable costs rental of land and buildings; REVISED CODES OF MONTANA, 1947 - Section 75-6905, 75-7813.1.

- HELD: 1. Rental of land and buildings is an allowable cost under section 75-7813.1, R.C.M. 1947, unless facilities are used only by special education pupils. In that case the costs are allowable only if specifically authorized by the Superintendent.
2. The amount of the total costs of land and building rentals which is an allowable cost for special education may not exceed the proportion of special pupils to regular pupils in the district in the previous year, unless the district itself rented

the property for special education prior to the 1974-75 school year.

3. If the district itself rented the land and buildings for special education prior to the 1974-75 school year, it may have as an allowable cost a prorated amount based upon the amount of building space used by the special and regular programs respectively.

14 June 1977

Ronald W. Smith, Esq.  
Hill County Attorney  
Hill County Courthouse  
Havre, Montana 59501

Dear Mr. Smith:

You have requested my opinion on the following question:

May the Havre Public School System include the cost of building rentals for special education programs as an allowable cost for determining its maximum budget without a vote under section 75-7813.1, R.C.M. 1947.

Public school funding is regulated by a number of complex statutes. Section 75-6905 limits the total amount of the general fund budget for any district, with some exceptions, to the amount specified in the "schedules" listed therein. Under subsection (20), the maximum budget without a vote for special education is determined by the Superintendent of Public Instruction on the basis of a program budget submitted by the district. That budget sets out the "allowable costs" as defined in section 75-7813.1.

That section requires the district and the superintendent to follow a lengthy schedule of allowable costs in determining the district's special education budget for state aid requests. Subsection (i) of section 75-7813.1 provides that allowable costs may include:

- (i) Other current charges, insurance, rental of land and buildings, and other expenses: (1) rental of land and buildings, when such premises meet all requirements of the board of public education and the department of health and environmental

sciences --no such costs may be charged to the special program without specific authorization from the superintendent of public instruction unless the land and buildings are shared between the special and regular pupils, and the amount of the total cost that may be charged to the special program may not exceed whatever proportion the number of special full-time pupils are to the total enrollment of the school district of the previous year. Provided, however, that any school district renting land and buildings for special education purposes prior to the 1974-75 school year is not subject to this requirement, and will charge a portion of the total cost when shared with regular programs, to be prorated based on the total amount of building space used by each type of program.

Land and building rentals are clearly allowable costs, assuming they meet the requirements of the Board of Public Education and the Department of Health and Environmental Sciences. The statute then makes a distinction between land and buildings shared between regular and special pupils, and those used only by special pupils. Building rentals in the latter case are an allowable cost only if specifically authorized by the superintendent.

Whether or not the building is shared by regular and special pupils, the amount of the total cost which is chargeable to special education as an allowable expense may not exceed the proportion of special to regular pupils in the total enrollment of the district for the previous year. Thus, if in the previous year the district had 10% special pupils, then only 10% of the rental of land and buildings for special education is an allowable cost.

Section 75-7813.1 then provides that "any school district renting" land and buildings for special education prior to the 1974-75 year is not subject to the proportional cost limitation described above. These pre-existing programs may charge a prorated portion of the total cost "based on the amount of building space used by each program."

Therefore, while it is clear that the Legislature intended to include rental of land and buildings as an allowable cost, that allowance is quite limited as a practical matter. Unless the Havre Public School System rented land and buildings for special education prior to the 1974-75 school year,

it is bound by the cost limitation based upon the ratio of special education program pupils. While there apparently was a special education program being conducted prior to 1974-75 in the same building now used by the district, the district did not participate in the program, or at least did not rent the land and buildings. The proviso to section 75-7813.1 clearly requires that to be subject thereto, the district itself must have rented the land and the buildings prior to the 1974-75 school year. The statute is concerned with the district's costs rather than those of any other entity which may have sponsored a program in the past. There is no other way to read the clear language of the section.

THEREFORE, IT IS MY OPINION

1. Rental of land and buildings is an allowable cost under section 75-7813.1, R.C.M. 1947, unless facilities are used only by special education pupils. In that case the costs are allowable only if specifically authorized by the Superintendent.
2. The amount of the total costs of land and building rentals which is an allowable cost for special education may not exceed the proportion of special pupils to regular pupils in the district in the previous year, unless the district itself rented the property for special education prior to the 1974-75 school year.
3. If the district itself rented the land and buildings for special education prior to the 1974-75 school year, it may have as an allowable cost a prorated amount based upon the amount of building space used by the special and regular programs respectively.

Very truly yours,

MIKE GREELY  
Attorney General