

VOLUME NO. 37

OPINION NO. 79

AUDIT - The auditing of post-secondary vocational-technical centers is the responsibility of the Legislative Auditor; VOCATIONAL EDUCATION - The auditing of post-secondary vocational-technical centers is the responsibility of the Legislative Auditor; REVISED CODES OF MONTANA, 1947 - Sections 79-2301, 79-2310, 82-4516.

HELD: The auditing of post-secondary vocational-technical centers is the responsibility of the Legislative Auditor.

17 October 1977

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

Dear Mr. Fryslie:

You have requested my opinion on the following question:

Is the auditing of post-secondary vocational-technical centers the responsibility of the Department of Community Affairs or the Legislative Auditor?

The auditing responsibilities of the Department of Community Affairs and the Legislative Auditor are found in section 82-4516, R.C.M. 1947 and section 79-2310, R.C.M. 1947, respectively.

Section 82-4516, R.C.M. 1947 lists several governmental entities which are subject to audit by the Department of Community Affairs, one of which is "school districts." Each of these enumerated units can be characterized as functions of local government.

The audit responsibilities of the Legislative Auditor, on the other hand, is to audit the financial affairs and transactions of every "state agency." Section 79-2310, R.C.M. 1947. "State agency" is defined for the purposes of the Legislative Audit Act, section 79-2301 et seq., R.C.M. 1947, as follows:

...all affairs, departments, boards, commissions, institutions, universities, colleges, and any other person or any other administrative unit of state government that spends or encumbers public moneys by virtue of an appropriation from the legislative assembly, or that handles money on behalf of the state, or that holds any trust or agency moneys from any source. (Emphasis added.) Section 79-2302(1), R.C.M. 1947.

Therefore, the auditing responsibility of the Department of Community Affairs is directed at local government units, whereas the Legislative Auditor must audit every "state agency," as defined by section 79-2302(1), R.C.M. 1947. Consequently, the determinative issue is whether post-secondary vocational-technical centers are "school districts" within the meaning of section 82-4516(1)(c), R.C.M. 1947, or "state agencies," as defined by section 79-2302(1), R.C.M. 1947.

The nature of post-secondary vocational-technical centers is best evidenced by the statutes which created the centers and define their control and direction.

Post-secondary vocational-technical centers were created pursuant to sections 75-7701, et seq., R.C.M. 1947, making the Board of Public Education the governing board of Montana. Section 75-7702, R.C.M. 1947. The Superintendent of Public Instruction is the executive officer of the Board of Public Education pursuant to section 75-7703, and section 75-7708, R.C.M. 1947, gives the board sole authority to approve post-secondary vocational-technical education programs and their budgets. It should be noted that ch. 434, Laws of Montana, 1975 which attempted to amend these sections was declared unconstitutional in Board of Education v. Judge, 167 Mont. 261, 538 P.2d 11 (1975). Therefore, the above-cited statutes remain controlling.

In comparison, school districts are governed by a local board of trustees pursuant to section 75-5932, R.C.M. 1947, and the trustees have the authority to approve the school district budget. Section 75-6716, R.C.M. 1947.

School districts and post-secondary vocational-technical centers also differ from a financial viewpoint. School districts are primarily financed through taxation by the local government. Section 75-6717, R.C.M. 1947. However,

although part of the vocational education financing may come from local taxation, section 75-7709(1)(a), R.C.M. 1947 states:

(1) The total of the budgets approved by the board of education together with the budget for the cost of state administration of the post-secondary vocational-technical centers shall constitute the total maximum approved, state-wide budget which shall be financed as follows:

(a) The primary source of financing is to be those funds specifically designated by legislative enactment or referendum by the people for financing post-secondary vocational-technical education in Montana. (Emphasis added.)

Furthermore, the legislative appropriations for vocational-technical centers are found within the appropriation to the Superintendent of Public Instruction not public school support. Montana Session Laws, 1977, Vol. II, p. 1998, H.B. 145. Also, section 75-7706, R.C.M. 1947 designates the state treasurer as the custodian of all federal and state moneys designated, appropriated or apportioned for vocational education, whereas the county treasurer is the custodian of school district moneys pursuant to section 75-6805, R.C.M. 1947.

Consequently, post-secondary vocational-technical centers are best characterized, for the purposes of auditing responsibility, as "state agencies" as defined by section 79-2302(1), R.C.M. 1947, and not as "school districts" within the meaning of section 82-4516(1)(c), R.C.M. 1947.

THEREFORE, IT IS MY OPINION:

The auditing of post-secondary vocational-technical centers is the responsibility of the Legislative Auditor.

Very truly yours,

MIKE GREELY
Attorney General