

VOLUME NO. 38

OPINION NO. 54

APPROPRIATIONS - Community colleges, budgets, legislative appropriations;

BOARD OF REGENTS - Community colleges, budget approval, legislative appropriations;

COMMUNITY COLLEGES - Budgets, state financing, appropriations;

MONTANA CODE ANNOTATED - Sections 20-9-112, 20-9-134, 20-15-103, 20-15-301, et seq., 17-7-101, et seq.

HELD: The General Appropriation Act of 1979 (House Bill No. 483) properly appropriates State funds to the community colleges.

5 November 1979

Ted O. Lympus, Esq.
Flathead County Attorney
Flathead County Courthouse
P.O. Box 1516
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Dear Mr. Lympus:

You have requested my opinion on the following question:

Does the General Appropriation Act of 1979 (House Bill No. 483) properly appropriate state funds to community colleges?

The real issue here is which entity has the ultimate responsibility and authority to determine how much money a community college receives from the State.

The trustees of a community college district are required, after public notice and opportunity for public input, to "adopt a preliminary budget for the next ensuing school year." § 20-9-112, MCA. The county superintendent then sends the completed budget forms to the Board of Regents. § 20-9-134, MCA. Community college districts are "under the supervision and coordination" of the Board. § 20-15-103, MCA.

This budget is referred to again in section 20-15-302, MCA, as the "annual operating budget" which must be approved by the Board. Once the budget is approved, section 20-15-302, MCA, provides that it "shall be the budget of the community college district submitted to the state budget director in accordance with Title 17, chapter 7." An "operating budget" is a schedule approved, in this case by the Board of Regents, which indicates expenditure levels for each agency program. Expenditures from legislative appropriations may be made only in accordance with approved operating budgets. See § 9, General Appropriation Act of 1979, House Bill 483.

The annual operating budget of a community college district is financed at a 65:35 state-to-local funds ratio. § 20-15-303, MCA. That section provides that estimated revenues from tuition and fees plus a mandatory mill levy "will provide 35% of the annual budget approved by the Board

of Regents." This total is then subtracted from the approved annual operating budget and the difference "shall be financed by a state appropriation for the purpose of financing community colleges in an amount of 65%." Subsection (2) of that same section, however, further provides that if "the state cannot fund the community colleges at 65% of the regents recommended budget," then the remainder may be raised through an additional levy approved by the voters of the community college district under section 20-15-306, MCA.

The General Appropriations Act of 1979 appropriated various amounts from the general fund to the three community colleges, and provided:

Funds generated from student fees and mandatory mill levies in excess of the funds necessary to provide 35% of the respective college's operating budget shall be used to reduce the following year's mandatory mill levy provided in 20-15-303(1)(b).

The above appropriations provide 65% of the respective operating budgets that shall be approved by the board of regents pursuant to 20-15-302 and 20-15-303. The remaining 35% of the operating budget shall be financed from student tuition and fees and a mandatory mill levy as provided in 20-15-303. The board of trustees of a community college district may elect to adopt an operating budget in excess of 100% of the general fund budget specified herein, only with the approval of an additional mill levy proposition as provided in 20-15-306 or upon receipt of federal, private or other funds not included in the general fund budget. General fund budget as used herein includes only state appropriations, student fees, and the mandatory mill levy, levied under the provisions of 20-15-303(1)(b).

You have suggested that the language just quoted conflicts with section 20-15-302, MCA, in that that section mandates that the budget approved by the Board of Regents shall be the budget for the college.

Part of the problem here apparently stems from confusion over the term "budget". In the first place, the word budget is not properly synonymous with the term "appropriation." An appropriation is a grant of authority enacted by the Legislature empowering an agency to expend public funds. This is done in Montana through the framework of a budget, which is a request to the Legislature for a given amount of spending authority. The Governor is the chief budget officer of the State, § 17-7-103, MCA, and is responsible for collecting budget information from each agency. §§ 17-7-111 and 17-7-112, MCA. If any agency fails to provide the requested information the budget director must prepare a "budget request" for that agency. § 17-7-112, MCA. The budget director must then examine all available budget information to determine the "necessity of the disbursements and funds requested.... The entire budget must present a "balanced financial plan" showing a "balance between the total proposed disbursements and the total anticipated receipts...." § 17-7-123, MCA. Only legislative branch requests may be submitted by the Governor "without changes." § 17-7-122, MCA.

Excepting only obligations of the State and salaries required to be paid by the constitution or laws of the State, the Legislature "may amend the proposed budget bill." § 17-7-131, MCA. "In other words, the Legislature has the power to adjust and finalize the budget." Judge v. Legislative Finance Committee, 168 Mont. 470, 480, 543 P.2d 1317 (1975).

Thus, the budget for the community college districts, approved by the Board of Regents, fits into the Budget Act procedure of section 17-7-101, et seq., MCA, just described. It is a budget request which may be altered by the chief budget officer, and which is ultimately subject to legislative approval. It is clear from section 20-15-303, MCA, that while sixty-five percent state funding of community colleges is the goal, the Legislature may or may not appropriate an amount equal to sixty-five percent of the district's proposed budget. If it does not, an additional levy, which must be approved by the voters in the district, is authorized to make up the deficiency. The General Appropriation Act of 1979 does no more than to reflect this entire statutory scheme, especially the requirements of section 20-15-301, et seq. MCA.

Montana law requires both the budget director to prepare, and the Legislature to adopt, a balanced budget. See §§ 17-7-121(1), 17-7-123, MCA; Mont. Const., art. VIII § 9. The only way either of these entities can fulfill this duty is to have the power and discretion to examine and amend any agency's budget request. Otherwise, the Legislature's appropriation authority is being exercised by another body.

THEREFORE, IT IS MY OPINION:

The General Appropriation Act of 1979 (House Bill No. 483) properly appropriates State funds to the community colleges.

Very truly yours,

MIKE GREELY
Attorney General