

VOLUME NO. 38

OPINION NO. 97

PUBLIC FUNDS - P.L. 81-874 funds, allocation to any operating budget of school district;
 SCHOOL DISTRICTS - P.L. 81-874 funds, permissible allocation to any operating budget;
 SCHOOL DISTRICTS - Mandatory reduction of permissive levy if allocated to general fund;
 FEDERAL LAW - P.L. 81-874, 20 U.S.C. § 238(g) (1980);
 MONTANA CODE ANNOTATED - Sections 20-9-143, 20-9-201, 20-9-352, 20-9-353(3);
 OPINIONS OF THE ATTORNEY GENERAL - 24 Op. Att'y Gen. No. 46 (1951), 28 Op. Att'y Gen. No. 58 (1960).

- HELD: 1. Federal funds received under P.L. 81-874 may be allocated by the trustees of a school district to any of its operating budgets that are supported by levies on property in the district. If such funds are allocated to the general fund budget, they must first be applied toward the permissive levy amount.
2. Due to the statutory changes in section 20-9-353, MCA, 28 Op. Att'y Gen. No. 58 is modified to delete the requirement of electorate approval for the use of P.L. 81-874 funds in excess of the amount that a 15-mill levy would produce.

11 August 1980

Ted O. Lympus, Esq.
 Flathead County Attorney
 Flathead County Courthouse
 P.O. Box 1516
 Kalispell, Montana 59901

Dear Mr. Lympus:

You have requested my opinion concerning:

1. For what purposes may a school district use P.L. 81-874 funds?
2. Does the passage of section 20-9-353, MCA, as it relates to the use of P.L. 874 funds, require the reversal of 24 Op. Att'y Gen. No. 46 (1951) and 28 Op. Att'y Gen. No. 58 (1960)?

P.L. 81-874 funds are distributed by the federal government to local school districts to relieve in part the increased tax burdens placed on such districts due to the existence of federal installations, activities, or property in the area. That purpose has been recognized by two previous Attorney General Opinions, 24 Op. Att'y Gen. No. 46 (1951) and 28 Op. Att'y Gen. No. 58 (1960). The general purpose of tax relief must be kept in mind whenever a school district is dealing with P.L. 81-874 funds.

Your letter states that the Superintendent of Public Instruction has concluded that "impact" funds received from the federal government under P.L. 81-874 must first be used to reduce the school district's permissive levy for the support of the general fund budget. That ruling is based on the Attorney General Opinions mentioned above. You go on to state that under this interpretation, P.L. 81-874 funds would not be available to meet transportation needs of a district because transportation costs are not paid from the general fund budget. Section 20-9-143, MCA, states:

Federal funds received by a district under the provisions of Title I of P.L. 81-874 or funds designated in lieu of such federal act by the Congress of the United States may be allocated to the various operating budgets of the district by the trustees.

The Superintendent's interpretation is basically consistent with that statute. P.L. 81-874 funds may be used by a school district in any of its operating budgets--that is, in any of those funds designated as "budgeted" in section 20-9-201, MCA. The general rule for allocation of the federal money, however, is that the funds are to provide taxpayer relief. As a result, if the monies are allocated to the general fund, they must be used to reduce the district's permissive levy for the support of the general fund. To allow a school district to apply P.L. 81-874 funds on top of the permissive levy would increase the general fund budget but diminish the possibility of taxpayer relief. Only if some or all of the permissive levy is reduced by the federal funds does the taxpayer receive any monetary relief.

The two Attorney General Opinions relied on by the Superintendent do not deprive the trustees of the authority granted them under section 20-9-352, MCA, as it relates to the permissive levy. Section 20-9-352, MCA, provides that if the trustees of any district find it necessary to adopt a

general fund budget in excess of the foundation program amount, but within the maximum amount allowed by law, they may levy up to 15 mills without electorate permission (9 mills maximum for elementary school, 6 mills maximum for high schools). The requirement that P.L. 81-874 funds used in the general fund budget first offset the permissive levy does not deprive the trustees of this power. The statutory purpose of P.L. 81-874 must be met regardless of the authority of section 20-9-352, MCA. The trustees can levy the maximum permissive amount by simply applying the funds elsewhere. 28 Op. Att'y Gen. No. 58 states only that P.L. 81-874 monies may be used in the permissive area, the operative word being "may," thus indicating a choice. The opinion goes on to hold that P.L. 81-874 monies may be used in all independent budgets which are supported by levies on the property in the district.

The final point in your letter suggests that in light of the recent amendments to section 20-9-353, MCA, the earlier Attorney General Opinions dealing with P.L. 81-874 funds should be reversed. Section 20-9-353(3), MCA, in relevant part, provides:

When the trustees of any district determine that an additional amount of financing is required for the general fund budget that is in excess of the statutory schedule amount, the trustees shall submit the proposition of an additional levy to raise such excess amount of general fund financing to the electors...to vote upon such proposition except that no election shall be required to permit the school trustees to use federal funds received under Title I of Public Law 81-874 to increase the school district's general fund budget ...by the amount of these funds.

The language concerning P.L. 81-874 funds was added in 1979 to conform State law to federal law, 20 U.S.C. § 238(g) (1980), which provides that "no state may require that a vote of the qualified electors of a heavily impacted school district of a local educational agency be held to determine if such school district will spend the amounts to which the local educational agency is entitled under this chapter."

24 Op. Att'y Gen. No. 46 is not affected by the amendment to section 20-9-353, MCA. That opinion was relied upon by the Superintendent for its articulation of the purpose of P.L. 81-874, but the rest of the opinion deals with an issue not applicable here.

28 Op. Att'y Gen. No. 58 does require some modification in light of section 20-9-353, MCA. That opinion held that P.L. 81-874 monies may not be used above the amount the permissive levy would produce without electorate approval. In view of the present statutory scheme, both federal and State, Opinion No. 58 is now modified to delete the requirement of electorate approval for the expenditure of P.L. 81-874 funds above the statutory limit. Disregarding that holding, the opinion continues to state the law.

THEREFORE, IT IS MY OPINION:

1. Federal funds received under P.L. 81-874 may be allocated by the trustees of a school district to any of its operating budgets that are supported by levies on property in the district. If such funds are allocated to the general fund budget, they must first be applied toward the permissive levy amount.
2. Due to the statutory changes in section 20-9-353, MCA, 28 Op. Att'y Gen. No. 58 is modified to delete the requirement of electorate approval for the use of P.L. 81-874 funds in excess of the amount that a 15 mill levy would produce.

Very truly yours,

MIKE GREELY
Attorney General