

VOLUME NO. 43

OPINION NO. 21

SCHOOL BOARDS - Elimination of debt in district's debt service fund; inclusion of anticipated delinquencies of tax payments in school district budget;

SCHOOL DISTRICTS - Duties of county superintendent in preparing school district budget; elimination of debt in district's debt service fund; inclusion of anticipated delinquencies of tax payments in school district budget;

MONTANA CODE ANNOTATED - Sections 7-6-2345, 20-9-114, 20-9-121, 20-9-123, 20-9-131 to 20-9-134, 20-9-161 to 20-9-167, 20-9-212, 20-9-213, 20-9-438 to 20-9-440.

- HELD: 1. A deficit in the school district's debt service fund should be eliminated through the budget and tax levy for the ensuing fiscal year.
2. The limited cash reserve in the debt service fund is made up of a portion of the cash balance of the fund at the end of the fiscal year. The trustees are not required to include a limited cash reserve in the debt service fund.
 3. The county superintendent may only increase the preliminary budget amount in the debt service fund to the amount of obligations for bonds and special improvement district assessments contained in the county treasurer's statement pursuant to section 20-9-121, MCA.
 4. Anticipated delinquencies in tax payments may be included in the computations in preparing the school district's debt service fund in the preliminary budget and setting the levy for the ensuing fiscal year.

June 22, 1989

Mike Salvagni
Gallatin County Attorney
Law and Justice Center
615 South 16th Street
Bozeman MT 59715

Dear Mr. Salvagni:

You have requested an opinion on several questions concerning the school district's debt service fund which I have phrased as follows:

1. When the debt service fund of the school district contains a deficit from the previous fiscal year, should the deficit be included in the budget for the ensuing fiscal year?
2. Pursuant to section 20-9-438(2), MCA, are the trustees of a school district required to include in the debt service fund's preliminary budget an amount for a limited cash reserve?
3. If the answer to question number 2 is yes, may the county superintendent determine the amount of the limited cash reserve in the event the trustees fail to do so?
4. May the county superintendent increase the preliminary budget amount in the debt service fund above the amount reported by the county treasurer in his statement detailing the obligations for bond retirement and interest as required by section 20-9-121, MCA?
5. May anticipated delinquencies in tax payments in the ensuing fiscal year be included in the school district's budget and levy?

Your questions concern financing of the debt service fund of the Manhattan school district. For the 1988-89 school fiscal year the Manhattan school board included in the preliminary budget for the debt service fund an amount representing the principal and interest on its bonds which will become due during the 1988-89 fiscal year. A limited cash reserve for the debt service fund was not included. Because of tax delinquencies there will not be sufficient money in the debt service fund to pay the bond obligations that will become due during the fiscal year. In addition, the cash balance at the end of fiscal year 1987-88 was already deficient because of tax delinquencies during that fiscal year. Money for these obligations was taken from surpluses in other funds. Thus, registered warrants were not issued against the debt service fund.

The debt service fund is established in each school district to provide payment of special improvement district assessments and bonded indebtedness incurred by the district. § 20-9-438(1), (2), MCA. It is funded primarily by the school district levy. § 20-9-439, MCA. Each year the district is required to budget for the debt service fund an amount of money necessary to pay the assessments and bond obligations that will become due during that fiscal year. §§ 20-9-438(1), (2), MCA. In addition, the fund may include a "limited cash reserve" that constitutes a portion of the cash balance left in the fund from the prior fiscal year. § 20-9-438(2)(b), (3), MCA. The purpose of this cash reserve is to provide for payment of obligations that become due in the four-month period between the beginning of the fiscal year and the time in which the taxes are collected. See hearings before the Senate and House Committees for Education and Cultural Resources, House Bill 18, January 28, 1987; March 4, 1987.

The Manhattan school district has been unable to include a "limited cash reserve" in its debt service fund because the large amounts of delinquencies in the previous years have eliminated any fund surplus. In fact, the fund is presently suffering a deficit of \$50,000.

Your first question is whether the school district's budget for the debt service fund should include the fund's deficit as well as the amounts needed to pay the obligations becoming due in the next fiscal year. I conclude the deficit should be included in the budget and the levy for the ensuing fiscal year.

The statutes governing school district financing require a debt service fund to be established for each district and used to pay obligations on bonds and special improvement district assessments. § 20-9-440, MCA. Each year the district is required to budget enough money for the fund to pay those obligations. § 20-9-438, MCA. The clear import of the statutory provisions is that the bond and special improvement district obligations be paid exclusively from the debt service fund. The Legislature has provided mechanisms to accommodate periodic shortfalls when the debt service fund obligations become due. The district is authorized to include in the fund a limited cash reserve, which is designed to enable the district to make payments on obligations that become due during the four-month period from the beginning of the fiscal year until the actual receipt to tax revenues. §§ 20-9-438(2)(b), (3), MCA. Also, the district is authorized to prepare an emergency budget, which entails the district's adopting an emergency resolution and obtaining approval for the emergency budget by the superintendent of public instruction. The levy to cover the emergency budget would be imposed in the next school fiscal year. See §§ 20-9-161 to 167, MCA.

The Manhattan school district borrowed money from other district funds to pay the bond obligations. The debt service fund consequently incurred a deficit for the borrowed amount.

I conclude that all moneys used to pay the obligations on the bonds and special improvement district assessments must be paid out of the debt service fund. The money to pay the bond obligations was borrowed from other funds and repaid, thus creating the deficit in the debt service fund. Since the fund is financed by a tax levy, the deficits in the fund must be corrected by the levy. Therefore, the budget and tax levy for the next fiscal year should reflect the amount of the deficit in the debt service fund.

It should be mentioned that section 20-9-212(9), MCA, authorizes the county treasurer to register warrants only when there is insufficient money available in all the funds of the school district. Warrants drawn on insufficient funds must be registered. § 7-6-2345, MCA. Thus, when the school district adopts an emergency budget, moneys must be borrowed from other funds to pay the emergency expenses before warrants to pay the emergency expenses out of the depleted debt service fund can be registered.

Your next question is whether the trustees are required to include in the debt service fund of the preliminary budget an amount for a limited cash reserve. Section 20-9-438(3), MCA, provides in pertinent part:

At the end of each school fiscal year, the trustees of a school district may designate a portion of the end-of-the-year cash balance of the debt service fund to be earmarked as a limited cash reserve for the purpose of paying, whenever a cash flow shortage occurs, debt service fund warrants and bond obligations which must be paid from July 1 through November 30 of the school fiscal year[.]

This language is clear and unambiguous, and needs no further construction. See Dunphy v. Anaconda, 151 Mont. 76, 438 P.2d 660, 662 (1968). The limited cash reserve can be made up only of a debt service fund surplus at the end of the fiscal year. Thus, if there is no cash surplus, there can be no limited cash reserve for the next fiscal year. Even if there is a cash surplus in the debt service fund, the trustees are not required to designate a portion for limited cash reserve. The statute is not mandatory.

Your next question is whether the county superintendent of schools may increase the preliminary budget amount in the debt service fund above the amount reported by the county treasurer in his statement detailing the obligations for bonds as required in section 20-9-121, MCA. That section requires the county treasurer to prepare a statement by July 10 describing for each fund the cash on hand and outstanding obligations as of the close of the last completed school fiscal year. The treasurer is also required to include a statement of the bond obligations that will become due in the next fiscal year.

Section 20-9-438(4), MCA, provides:

The county superintendent shall compare the preliminary budgeted amount for the debt service fund with the bond retirement and interest requirement and the special improvement district assessments for the school fiscal year just beginning as reported by the county treasurer in his statement supplied under the provisions of 20-9-121. If the county superintendent finds that the requirement stated by the county treasurer is more than the preliminary budget amount, the county superintendent shall increase the budgeted amount for interest or principal in the debt service fund of the preliminary budget. The amount confirmed or revised by the county superintendent shall be the final budget expenditure amount for the debt service fund of such school district. [Emphasis added.]

This section authorizes the county superintendent to increase the budgeted amount only if the amount in the preliminary budget is less than the amount of obligations payable as stated by the county treasurer. There is no statutory authority for the county superintendent to increase the amount in the budget above the amount reported by the county treasurer. The function of preparing and adopting the budget rests primarily with the board of trustees; the roles of the county superintendent and the county commissioners are limited. The trustees prepare and adopt the preliminary and final budgets. §§ 20-9-131 to 133, MCA. In preparation for the tax levy the county superintendent prepares estimates of revenues available to finance each fund. § 20-9-123, MCA. After the adoption of the final budget by the trustees the county superintendent completes the final budget forms, computes the levy requirements for the school district's funds, and places the final adopted budget before the county commissioners who will fix and impose the tax levy. §§ 20-9-134, 20-9-141, 20-9-142, MCA. Thus, the county superintendent has no discretionary function in preparing the school district's budget. (The one exception is when the trustees refuse to prepare the budget; then the county superintendent does so. § 20-9-114, MCA.) The fact that the trustees maintain exclusive authority to prepare and adopt the district's budget comports with the requirement that only the trustees have authority to expend moneys of the school district. § 20-9-213, MCA. I thus conclude that the county superintendent may not increase the preliminary budget above the amount contained in the county treasurer's statement of bond obligations and special improvement district assessments due in the ensuing fiscal year.

Your final two questions concern the ability of the school district to prepare its budget and tax levy to include anticipated delinquencies in tax payments during the ensuing fiscal year. I conclude that the budget of the debt service fund and subsequent levy may reflect anticipated delinquencies. Section 20-9-438, MCA, which contains the procedure for preparation of the debt service fund, provides in part:

(1) The trustees of each school district having outstanding bonds shall include in the debt service fund of the preliminary budget adopted in accordance with 20-9-113 an amount of money that is necessary to pay the interest and the principal amount becoming due during the ensuing school fiscal year for each series or installment of bonds, according to the terms and conditions of such bonds and the redemption plans of the trustees. [Emphasis added.]

I believe that in calculating the amount of money necessary to pay these obligations, the trustees must consider anticipated delinquencies; otherwise the amount budgeted will be insufficient to cover the obligations. Delinquencies almost always occur and they can be estimated on the basis of previous years. Clearly this subsection contemplated that the debt service fund contain enough money to pay the obligations as they become due. To ignore the realities of tax delinquencies would thus defeat the intent of this legislation. Tax legislation must be construed in a practical manner. *In re Kohr's Estate*, 122 Mont. 145, 199 P.2d 856, 871 (1948).

THEREFORE, IT IS MY OPINION:

1. A deficit in the school district's debt service fund should be eliminated through the budget and tax levy for the ensuing fiscal year.
2. The limited cash reserve in the debt service fund is made up of a portion of the cash balance of the fund at the end of the fiscal year. The trustees are not required to include a limited cash reserve in the debt service fund.
3. The county superintendent may only increase the preliminary budget amount in the debt service fund to the amount of obligations for bonds and special improvement district assessments contained in the county treasurer's statement pursuant to section 20-9-121, MCA.
4. Anticipated delinquencies in tax payments may be included in the computations in preparing the school district's debt service fund in the preliminary budget and setting the levy for the ensuing fiscal year.

Sincerely,

MARC RACICOT
Attorney General