

## VOLUME NO. 44

## OPINION NO. 41

PUBLIC FUNDS - Allocation of Pub. L. No. 81-874 funds to operating budgets;  
SCHOOL DISTRICTS - Repayment of improper transfers between budgeted funds;

SCHOOL DISTRICTS - Transferring monies from general fund to debt service fund;

MONTANA CODE ANNOTATED - Sections 20-9-141(1)(b)(i), 20-9-143, 20-9-145, 20-9-208(2), 20-9-301, 20-9-343(1)(a), 20-9-344, 20-9-353, 20-9-367(1), 20-9-368, 20-9-438(1), (2), 20-9-439, 20-9-440(2), 20-9-443;

OPINIONS OF THE ATTORNEY GENERAL - 38 Op. Att'y Gen. No. 97 (1980) (overruled in part);

UNITED STATES CODE - 20 U.S.C. §§ 236-240.

- HELD: 1. A school district may not transfer monies from the general fund to the debt service fund, nor may a school district allocate monies from the general fund for payment of bond principal and interest.
2. A school district which improperly transferred monies from the general fund to the debt service fund or improperly allocated monies from the general fund for the payment of bond principal and interest must repay the state for any increase in guaranteed tax base aid that resulted from the improper transfer or allocation.
3. No statutory changes since the issuance of 38 Op. Att'y Gen. No. 97 (1980) have affected the basis for the opinion which held that under state law, a school district may deposit Pub. L. No. 81-874 monies into any operating budget. However, its conclusion that if the Pub. L. No. 81-874 monies are allocated to the general fund budget they must first be applied toward the permissive levy amount is incorrect, at least until Montana is certified under 20 U.S.C. § 240(d)(2)(i) as a state which may consider such monies in determining the amount of state aid available to a school district.

October 1, 1992

Nancy Keenan  
Superintendent of Public Instruction  
Room 106, State Capitol  
Helena MT 59620-2501

Dear Superintendent Keenan:

You have requested my opinion concerning questions I have rephrased as follows:

1. May a school district transfer monies from its general fund to its debt service fund for the purpose of paying bond principal and interest, or alternatively, may a school district allocate monies within its general fund for the payment of bond principal and interest?
2. If either aspect of question No. 1 is answered in the negative, do sections 20-9-344 and 20-9-368, MCA, require the school district to reimburse the state for that portion of the improperly transferred monies which is attributable to guaranteed tax base aid received by the district?
3. Is 38 Op. Att'y Gen. No. 97 (1980) still valid in light of subsequent statutory amendments?

A general fund for each school district was authorized by statute "to finance those general maintenance and operational costs of a district not financed by other funds established for special purposes in this title." § 20-9-301(2), MCA. A general fund must be financed by "the foundation program revenues and may be supplemented by a permissive levy, voted levy, or other revenue, as provided by 20-9-145 and 20-9-353." § 20-9-301(3), MCA. A school district is also authorized to establish a debt service fund to provide payment of special improvement district assessments and bonded indebtedness incurred by the district. § 20-9-438(1), (2), MCA. A debt service fund is financed primarily through a school district levy. § 20-9-439, MCA.

During fiscal year 1991 some school districts budgeted for a transfer of cash from their general funds to their debt service funds. Several of the districts actually transferred the cash to pay the districts' bond principal and interest payments. Others paid their bond principal and interest payments directly from their general funds. These school districts, by transferring or using general fund monies, avoided the necessity of imposing a levy in fiscal year 1991 to raise revenue for their debt service funds. All of these districts used the "permissive amount," as defined in section 20-9-145, MCA, for support of their

general funds and, because their mill values were less than the statewide average, received guaranteed tax base aid under section 20-9-368, MCA.

Your first question is whether a school district may either transfer funds from its general fund to its debt service fund or allocate monies within the general fund for the payment of bond principal and interest. I conclude that the school finance statutes do not permit such a transfer or allocation.

The school finance statutes are very detailed and specify the manner in which each budgeted fund is to be financed. As stated above, the purpose of a school district's general fund "is to finance those general maintenance and operational costs of a district *not financed by other funds established for special purposes in this title.*" § 20-9-301(2), MCA (emphasis added). A district's debt service fund is intended to be used for the payment of bond principal and its interest. § 20-9-440(2), MCA. When computing the levy requirement for a school district's debt service fund, the county superintendent must first determine the end-of-the-year balance in the fund, anticipated interest from the monies in the fund, and any other money anticipated by the trustees to be available in the debt service fund. § 20-9-439, MCA. No authority exists for financing the debt service fund from a transfer of monies from the general fund or by allocating monies in the general fund for payment of bond principal and interest. The only transfer of monies that the Legislature has allowed between these two funds is provided by section 20-9-443, MCA. This statute provides that when all of the bonds and their interest have been fully paid, the remaining money in the debt service fund shall be transferred to the general fund of the respective school district. § 20-9-443, MCA. No statute exists which contemplates the transfer of monies from the general fund to the debt service fund, and no statute exists which allows a school district to allocate monies in the general fund for the payment of bond principal and interest. Moreover, section 20-9-208(2), MCA, prohibits the transfer of budgeted amounts between funds unless specifically authorized by statute.

Because I conclude that the Montana statutes do not authorize the transfer of funds from a school district's general fund to its debt service fund for the payment of bond principal and interest, it is necessary to address whether the school districts mentioned in your opinion request must repay the state from revenue available to the debt service funds for any general fund revenues used to pay debt service obligations. Because the statutes do not allow the transfer of monies from the general fund to the debt service fund, they do not directly address the repayment of improperly transferred funds. However, under the facts you have outlined in your letter, the possibility exists that these particular school districts received more state equalization aid, in the form of guaranteed tax base aid ("GTBA"), than that to which they were entitled. This possibility exists because the school districts in effect may have had to increase the number of mills they levied for their general funds as a result of using general fund monies for payment of bond principal and interest. The number of permissive mills levied for the general fund determines the amount of

guaranteed tax base aid a school district receives. § 20-9-367(1), MCA. The statutes do require that if a school district receives more state equalization aid than that to which it is entitled, it must refund the overpayment to the state. §§ 20-9-344(5), 20-9-368(4), MCA.

Whether the school districts mentioned in your opinion request actually received more GTBA than they should have requires a closer examination of their final budget reports for fiscal year 1991. In these reports, the general fund budget spending limit lists three components. Included among these components are the school districts' estimated receipts under Public Law No. 81-874 (codified in 20 U.S.C. §§ 236-240) ("Pub. L. No. 81-874"). As discussed below in more detail, Montana law authorizes placement of Pub. L. No. 81-874 monies into any operating budget of a school district including its debt service fund. § 20-9-143, MCA. An examination of the school districts' final budget reports for fiscal year 1991 discloses that several of the school districts received Pub. L. No. 81-874 monies in excess of the amount transferred to their debt service funds for payment of bond principal and interest and placed those monies into their general funds. Thus, for state law purposes, these school districts did not benefit from the error by receiving more GTBA than allowed by state law because the amount of Pub. L. No. 81-874 monies they received and placed into the general fund adequately covered the amount they transferred to the debt service fund. I see no transgression of state law with respect to these districts' actions, although in the future the improper transfers should not occur. In contrast, one school district may have obtained more GTBA than allowed under Montana law since no Pub. L. No. 81-874 income is reflected on its budget report. This school district therefore may have received more GTBA than that to which it was entitled and, if overpayment has occurred, is required to reimburse the state for the GTBA overpayment. Whether any overpayment actually occurred is most appropriately determined by your office after consultation with the district and review of pertinent expenditure data. § 20-9-344, MCA.

The last question you have posed is whether 38 Op. Att'y Gen. No. 97 at 335 (1980), which concluded in part that school districts are allowed to deposit Pub. L. No. 81-874 revenue directly into budgeted funds, is still valid in light of the statutory changes since the issuance of the opinion. Section 20-9-143, MCA, then as now, states:

Federal funds received by a district under the provisions of Title I of Public Law 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.

Thus, Montana statutes do not restrict the placement of Pub. L. No. 81-874 monies to any one budgeted fund. Former Attorney General Greely, however, also determined in that opinion that, if Pub. L. No. 81-874 monies are allocated to the general fund budget, they must first be applied toward the permissive levy amount. This aspect of the opinion is questionable, at least under present

school finance statutes, because GTBA is a form of state equalization aid (§ 20-9-343(1)(a), MCA) and because Montana has not been certified under 20 U.S.C. § 240(d)(2)(i) as a state in which Pub. L. No. 81-874 monies may be included when determining the eligibility of a local educational agency for state aid. See, e.g., Carlsbad Union School District v. Rafferty, 429 F.2d 337, 339 (9th Cir. 1970); Douglas Independent School District v. Jorgenson, 293 F. Supp. 849, 852 (D.S.D. 1968); San Miguel Joint Union School District v. Ross, 118 Cal. App. 3d 82, 173 Cal. Rptr. 292 (1981). Requiring a school district to apply such monies toward the permissive amount would reduce the GTBA otherwise available to the district and thereby jeopardize the district's eligibility for Pub. L. No. 81-874 assistance. See 20 U.S.C. § 240(d)(1). Consequently, while section 20-9-141(1)(b)(i), MCA, can be read to obligate a school district to apply Pub. L. No. 81-874 monies toward the permissive amount, I concur with the Office of Public Instruction regulations which recognize that districts have discretion in deciding whether to use federal impact aid for the purpose of eliminating or reducing the amount of a permissive levy. §§ 10.23.101(5), 10.23.102(6), ARM. I accordingly overrule 38 Op. Att'y Gen. No. 97 (1980) to the extent it suggests a contrary conclusion.

THEREFORE, IT IS MY OPINION:

1. A school district may not transfer monies from the general fund to the debt service fund, nor may a school district allocate monies from the general fund for payment of bond principal and interest.
2. A school district which improperly transferred monies from the general fund to the debt service fund or improperly allocated monies from the general fund for the payment of bond principal and interest must repay the state for any increase in guaranteed tax base aid that resulted from the improper transfer or allocation.
3. No statutory changes since the issuance of 38 Op. Att'y Gen. No. 97 (1980) have affected the basis for that opinion which held that under state law, a school district may deposit Pub. L. No. 81-874 monies into any operating budget. However, its conclusion that if the Pub. L. No. 81-874 monies are allocated to the general fund budget they must first be applied toward the permissive levy amount is incorrect, at least until Montana is certified under 20 U.S.C. § 240(d)(2)(i) as a state which may consider such monies in determining the amount of state aid available to a school district.

Sincerely,

MARC RACICOT  
Attorney General