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VOLUME NO. 45

OPINION NO. 27

SCHOOL BOARDS - Authority to transfer funds from end-of-the-year general fund balance;
SCHOOL DISTRICTS - Trustees' authority to transfer funds from end-of-the-year general fund balance;
SUPERINTENDENT OF PUBLIC INSTRUCTION - Authority to limit interfund transfers by local school trustees;
MONTANA CODE ANNOTATED - Sections 20-9-104, -133, -512;
MONTANA LAWS OF 1991 - Chapter 754;
MONTANA LAWS OF 1981 - Chapter 138.

HELD: School district trustees may transfer any portion of the end-of-the-year general fund balance into the compensated absence liability fund subject to the limitations in Mont. Code Ann. § 20-9-512(4).

July 8, 1994

Mr. Mike McGrath
Lewis and Clark County Attorney
Courthouse, 228 Broadway
Helena, MT 59623

Dear Mr. McGrath:

You have requested my opinion on the following issue:

Whether school district trustees are limited to amounts budgeted in but not expended from the general fund when they make a transfer from the end-of-the-year general fund balance into the compensated absence liability fund pursuant to Mont. Code Ann. § 20-9-512(3).

Resolution of this issue turns on the meaning of the term "general fund end-of-the-year fund balance" appearing in Mont. Code Ann. §§ 20-9-104 and -512(3). Because that term must be given the same meaning in both provisions and because in § 20-9-104 it unquestionably includes any revenue remaining in a school district's general fund at the end of the fiscal year after satisfaction of all liabilities, I conclude school district trustees are not limited to amounts budgeted but not expended in making transfers under § 20-9-512(3).

Mont. Code Ann. § 20-9-512(3) reads:

At the end of each school fiscal year, the trustees may appropriate a portion of the general fund end-of-the-year fund balance to establish and maintain the compensated absence liability fund.

The amount which may be transferred from the general fund end-of-the-year fund balance is limited in Mont. Code Ann. § 20-9-512(4), but that limit is not relevant here. The term "general fund end-of-the-year fund balance" is also used in Mont. Code Ann. § 20-9-104, which deals with determining permissible general fund operating reserves. No dispute exists that, in determining the general fund end-of-the-year fund balance under the latter section, all revenues received during the fiscal year, including amounts in excess of those anticipated when the general fund budget was set, must be counted. Subsection (5) of § 20-9-104 thus excludes certain types of unanticipated tax revenue from the operating reserve limit--an exclusion which would be meaningless if those amounts were not part of the general fund end-of-the-year budget balance. See also Montana School Accounting Manual ¶ 7-0430 (the general fund end-of-the-year fund balance consists of the total of all revenues and other financing sources, less all expenditures and other financing uses). Since it is presumed ordinarily that, where the legislature has used an identical phrase in different sections of a single statutory scheme, an identical meaning is intended, the meaning given "general fund end-of-the-year fund balance" in § 20-9-104 must be given that term in § 20-9-512(3). People v. Hernandez, 637 P.2d 707, 710 (Cal. 1981); Agustin v. Dan Ostrow Constr. Co., 636 P.2d 1348, 1351 (Haw. 1981).

My conclusion in this regard is supported by another consideration. In 1981 the legislature established the reserve fund for payment of accumulated sick leave and provided for its funding from the "general fund end-of-the-year cash balance." 1981 Mont. Laws, ch. 138. Ten years later it replaced the sick leave reserve fund with the compensated absence liability fund. 1991 Mont. Laws, ch. 754. The amended statute, however, left in place the provision for transferring amounts from the general fund end-of-the-year balance, substituting the word "fund" for "cash." Throughout the 1981-91 period school districts, with approval of the office of public instruction, effected transfers pursuant to § 20-9-512(3) consistent with the above construction of the term "general fund end-of-the-year fund balance." The replacement of "cash" with "fund" was presumably a technical change designed to make uniform the terminology in §§ 20-9-104 and -512(3). The Montana Supreme Court has recognized that "the re-enactment of a statute, or passage of a similar one, in substantially the same terms, is an

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adoption of the practical construction placed on the previous statute by the administrative department of government." State ex rel. Lewis & Clark County v. Board of Pub. Welfare, 141 Mont. 209, 212, 376 P.2d 1002, 1003 (1962).

Three concerns have been expressed over the construction of "general fund end-of-the-year fund balance" adopted here. The first involves Mont. Code Ann. § 20-9-133(2). That provision states:

Except as provided in subsection (3), the trustees and all officers and employees of the district are limited in making expenditures or incurring liabilities to the total amount of each fund's budget. Transfers from any appropriation item to another appropriation item within a fund's budget may be made as provided by 20-9-208. Except as provided in subsection (3), money of the district may not be used to pay expenditures made, liabilities incurred, or warrants issued in excess of the final budget established for each budgeted fund.

The suggestion is that this statute limits transfers under § 20-9-512(3) to actually budgeted amounts. I disagree. The legislature gave a specific meaning to the term "general fund end-of-the-year fund balance." That meaning has been discussed above. Since the specific statute controls the general (Carbon County Sch. Dist. No. 28 v. Spivey, 247 Mont. 33, 805 P.2d 61 (1991)), a contention that § 20-9-133(2) in some fashion modifies operation of § 20-9-512(3) cannot be credited. Authority also exists for the proposition that interfund transfers should be distinguished from expenditures in financial statements. Governmental Accounting Standards Board, Codification of Governmental Accounting and Financial Reporting Standards § 1800.107 (1993). Instantly, transfers pursuant to § 20-9-512(3) are not "expenditures" under § 20-9-133(2). This reading enables the statutes to be reconciled, which they must be if possible. Schuman v. Bestrom, 214 Mont. 410, 415, 693 P.2d 536, 538-39 (1985).

The second concern is that my interpretation of § 20-9-512(3) runs counter to generally accepted accounting principles as applied by the office of public instruction and, therefore, Mont. Code Ann. § 20-9-103. See Montana School Accounting Manual ¶ 6-0200.11. The requirement for school budget forms to be prescribed in accordance with generally accepted accounting principles does not contravene the express language in § 20-9-512(3). Again, the specific statute controls over the more general. Reliance on the contrary application of those principles by the office of public instruction

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is unavailing. Darby Spar Ltd. v. Department of Revenue, 217 Mont. 376, 379, 705 P.2d 111, 113 (1985).

Finally, it has been suggested that adoption of this interpretation will limit the accountability of trustees and allow them to escape public scrutiny in the process of expending public funds. While that may be sound public policy and one which the legislature will wish to explicitly adopt in the future, I am constrained to interpret the law as it is written. I find no basis for concluding that school district trustees may establish or maintain the compensated absence liability fund only with the positive difference between initially budgeted and actually expended amounts.

THEREFORE, IT IS MY OPINION:

School district trustees may transfer any portion of the end-of-the-year general fund balance into the compensated absence liability fund subject to the limitations in Mont. Code Ann. § 20-9-512(4).

Sincerely,



JOSEPH P. MAZUREK
Attorney General

jpm/rfs/brf