



## Education and Local Government Interim Committee

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### 62nd Montana Legislature

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March 8, 2012

Montana Association of School Business Officials  
Attn: Steve Johnson

### Re: Use of Public School Extracurricular Funds

Dear Mr. Johnson:

At the January 24, 2012 Education and Local Government Interim Committee Hearing, a letter was presented on North Star Public School letterhead requesting assistance from the Committee with respect to the allowed uses of public school extracurricular funds. It is my understanding that this request is made by the Montana Association of School Business Officials (MASBO). The documents supplied to the Committee included a copy of a 1959 Attorney General's Opinion regarding the proper purpose of public school extracurricular funds and a request to alter the Attorney General's Opinion.

The Legislature cannot directly amend or change an Attorney General's Opinion. An Attorney General's Opinion holds the force of law unless overturned by a district court or the Montana Legislature. There are potential alternatives, however, which I discuss below.

MASBO has requested a review of 28 A.G. Op. 44 (1959), an Attorney General's Opinion that considered whether student activity fees could be used to purchase bonds. Relying on § 75-1632, R.C.M. (1947), Attorney General Forrest Anderson opined that it was not a proper purpose of public school extracurricular activities to accumulate funds for investment. Although § 75-1632, R.C.M., listed the general obligations of school board trustees, including providing a system of bookkeeping and annual auditing of funds, that statute did not speak directly to the use of extracurricular funds.

Section 75-1632, R.C.M., 1947, was repealed in 1971. During the 1971 Legislative Session, § 75-6323, R.C.M., was enacted, which in 1979 was renumbered as § 20-9-504, MCA. It provides:

**Extracurricular fund for pupil functions.** (1) The government of the pupils of the school within a district or the administration of a school on behalf of the pupils may establish an extracurricular fund for the purposes of the receipts and expenditures of money collected for pupil extracurricular functions with the

approval of the trustees of the district. All extracurricular money of a pupil organization of the school must be deposited and expended by check from a bank account maintained for the extracurricular fund.

(2) An accounting system for the extracurricular fund recommended by the superintendent of public instruction must be implemented by the trustees. The accounting system must provide for:

(a) the internal control of the cash receipts and expenditures of the money;  
and

(b) a general account that can be reconciled with the bank account for the extracurricular fund and reconciled with the detailed accounts within the extracurricular fund maintained for each student function.

By implication, this statute is the Legislature's comment on the purpose of public school extracurricular funds and effectively replaces the 1959 Attorney General's Opinion.

Nonetheless, § 20-9-504, MCA, limits the use of extracurricular funds to the purpose for which the fees are collected. MASBO has requested that the Education and Local Government Interim Committee amend current law to include the ability of a school district to invest interest from extracurricular funds and use the proceeds to pay for all costs associated with administering student activity accounts or, if the interest account reaches a "substantial amount", for purchase of equipment or supplies to enhance education of students. A review of § 20-9-504, MCA, indicates that the statute does not currently allow for the use of extracurricular funds in this manner. However, the Committee is willing to discuss this matter with MASBO further and has set aside time on the agenda for its March 22, 2012, hearing to discuss the issue. You are invited to attend the hearing and provide any comments between 11:30 a.m. and 12:00 p.m. The website where the agenda can be found is here: <http://leg.mt.gov/elgic>.

Please do not hesitate to contact me at 406-444-4024 or Leanne Kurtz at 406-444-3593 to confirm that you are available at that time or should you have questions.

Sincerely,

Daniel J. Whyte  
Legislative Attorney