

SCHOOL DISTRICTS - Procedures for transferring bus depreciation reserve funds;
STATUTORY CONSTRUCTION - Construing specific legislative intent in relation to general intent;
MONTANA CODE ANNOTATED - Sections 1-2-102, 20-9-142, -201(1)(a), (3)(a), -208, (2), (a), (1), 20-10-147, (2), (4).

HELD: Before school district trustees may transfer any portion or all of the district's bus depreciation reserve fund to any other fund maintained by the district, the trustees must have sold all of the district's buses and submitted the proposed transfer to the electors of the district.

July 15, 2005

Ms. Linda McCulloch
Superintendent
Office of Public Instruction
P.O. Box 202501
Helena, MT 59620-2501

Dear Superintendent McCulloch:

You have requested my opinion regarding the interpretation and resolution of any conflict with respect to the following statutes: Mont. Code Ann. §§ 20-9-201(3)(a), 20-9-208(2)(a) and 20-10-147(4). You have stated your question as follows:

May school district trustees transfer a portion or all of the cash balance from the district's bus depreciation reserve fund to another budgeted fund of the district under the provisions of Mont. Code Ann. § 20-9-208(2) or close the fund to any other fund of the district under Mont. Code Ann. § 20-9-201(3) regardless of whether the district has sold all its buses and submitted the proposition to voters under the conditions of Mont. Code Ann. § 20-10-147(4)?

The three laws in question all deal with the transfer of balances between funds by the trustees of a school district.

Mont. Code Ann. § 20-9-201(3)(a) states:

Except . . . as otherwise provided by law, whenever the trustees of a district determine that a fund is inactive and will no longer be used, the trustees shall close the fund by transferring all cash and other account balances to any fund considered appropriate by the trustees if the fund does not have a cash or fund balance deficit.

Mont. Code Ann. § 20-9-208(2)(a)(i) addresses the issue somewhat differently. It provides:

(2) Unless otherwise restricted by a specific provision in this title, transfers may be made between different funds . . . under one of the following circumstances:

(a) (i) . . . transfers may be made from one budgeted fund to another budgeted fund or between the final budget and a budget amendment for a budgeted fund whenever the trustees determine, in their discretion , that the transfer of funds is necessary to improve the efficiency of spending within the district or when an action of the trustees results in savings in one budgeted fund that can be put to more efficient use in another budgeted fund. Transfers may not be made with funds approved by the voters or with funds raised by a nonvoted levy unless the transfer is within or directly related to the purposes for which the funds were raised. Before a transfer can occur, the trustees shall hold a properly noticed hearing to accept public comment on the transfer.

The bus depreciation reserve fund is defined by statute as a “budgeted fund” and is a non-voted levy. Mont. Code Ann. §§ 20-9-201(1)(a), 20-10-147(2), 20-9-142.

In the third statute the legislature specifically addressed transfers from the bus depreciation reserve fund. Montana Code Annotated § 20-10-147(4) permits the transfer of some or all of the bus depreciation reserve fund to any other fund maintained by the district if the trustees first sell all of the district’s buses and then submit the proposed transfer to the voters:

Whenever the trustees of a district maintaining a bus depreciation reserve fund sell all of the district’s buses and consider it to be in the best interest

of the district to transfer any portion or all of the bus depreciation reserve fund balance to any other fund maintained by the district, the trustees shall submit the proposition to the electors of the district.

An apparent conflict exists among the requirements and procedures set forth in these three statutes. Montana Code Annotated § 20-9-201(3)(a) suggests that the trustees may close any fund and transfer the balance to any other fund if the trustees determine that the fund is inactive and will no longer be used. Montana Code Annotated § 20-9-208(2) states that the trustees may make transfers from one budgeted fund to another of non-levy funds only if the transfer is related to the purpose for which the funds were raised. And Mont. Code Ann. § 20-10-147 allows the transfer of bus depreciation reserve funds to any other fund of the district, but only after the trustees have first sold the buses and then submitted the proposed transfer to the voters for approval.

The conflict among these statutory sections is resolved through the application of a long-recognized principle of statutory construction that is codified in statute and explicated in our case law. This principle holds that “In the construction of a statute, the intention of the legislature is to be pursued if possible. When a general and particular provision are inconsistent, the latter is paramount to the former, so a particular intent will control a general one that is inconsistent with it.” Mont. Code Ann. § 1-2-102. Recently our Supreme Court commented on this precept as follows:

It is a well-settled rule of statutory construction that the specific prevails over the general. A particular statutory intent controls over a general one that is inconsistent with it. Mont. Code Ann. § 1-2-102. Further, when two statutes deal with a subject, one in general and comprehensive terms, and the other in minute and more definite terms, the more definite statute will prevail to the extent of any opposition between them.

State v Smith, 2004 MT 191, ¶ 17, 322 Mont. 206, 95 P.3d 137.

All three statutes in question address transfers from one fund to another by the trustees. But Mont. Code Ann. §§ 20-9-201(3)(a) and -208(2)(a) set forth general requirements for transfers between funds. Neither specifically addresses transfers from the bus depreciation reserve fund. Also significant is the qualification set forth by both statutes. The procedures of § 20-9-201(3)(a) are to be followed “[e]xcept . . . as otherwise provided by law.” Similarly, § 20-9-208 provides for procedures to be followed “[u]nless otherwise restricted by a specific provision in this title” These limitations clearly demonstrate an intent by the legislature to subject the general procedures defined by these two statutes to more specific requirements imposed elsewhere.

These more specific requirements are found in Mont. Code Ann. § 20-10-147. In this statute the legislature articulated the unique steps to be taken in fund transfers from a bus depreciation reserve fund. Accordingly, the provisions of Mont. Code Ann. § 20-10-147 must be applied when a transfer is made from a bus depreciation reserve fund and any conflict which arises between the language of Mont. Code Ann. §§ 20-9-201(3)(a) and -208(2)(a) on the one hand and Mont. Code Ann. § 20-10-147 on the other must be resolved in favor of the more specific requirements of the latter.

It has been suggested that this analysis fails to accurately interpret Mont. Code Ann. § 20-10-147. The following proposition is advanced: that § 20-10-147 controls transfers from the bus depreciation reserve fund only when two conditions are met--the sale of all the buses of the district and the conclusion by the trustees that a transfer of funds is in the best interests of the district. When these two conditions are met, then the trustees may submit the proposition to the electors for approval. Until the two conditions are met, transfers may be made from the fund pursuant to Mont. Code Ann. §§ 20-9-201(3)(a) and/or 20-9-208(2)(a). School districts can therefore transfer some or all of the reserve fund to another budgeted fund without voter approval as long as the district has not sold all of its buses. This interpretation is, in my opinion, unworkable under the existing statutory structure and unsubstantiated by the legislative history of the statute.

Mont. Code Ann. § 20-9-208(2)(a) does allow for transfers from one fund to another but prohibits the transfer of “funds raised by a nonvoted levy unless the transfer is within or directly related to the purposes for which the funds were raised.” The bus depreciation fund is raised by a nonvoted levy. Mont. Code Ann. § 20-10-147. It is difficult to conceive of a fund to which bus reserve balances could be transferred that would be “within or directly related to the purpose for which the funds were raised,” namely the purchase and maintenance of buses.

An additional difficulty with the suggested interpretation is found in the legislative history. Prior to 1997, § 147 allowed transfer from the fund after voter approval if the trustees felt that it was in the best interests of the district. There was no requirement that the buses be sold. In 1997 Senator Toews introduced Senate Bill 244, “An Act allowing the transfer of a bus depreciation reserve fund balance *only when a school district sells all of its buses. . .*” (Emphasis added.) Senator Toews testified before the Senate Education and Cultural Resources Committee on February 5, 1997 and stated that “Senate Bill 244 ensured the honesty of the trustees in managing the bus depreciation reserve fund; in order to use the reserve fund money, all the buses must be sold.” Committee member Senator Gage observed that “Senate Bill 244 said as long as the district had a bus, taking money from the reserve fund (even with a vote of the people) would not be an option.” Minutes of Senate Education and Cultural Resources

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Committee, February 5, 1997, at 4-6. The title of an act and proceedings from its legislative history are strong evidence of legislative intent. Peretti v. State, 238 Mont. 239, 245, 777 P.2d 329, 333 (1989) (title is presumed to reflect legislature's intent in adopting statute).

The interpretation advanced above would make it easier for the trustees to make transfers from the fund if the two conditions set forth in Mont. Code Ann. § 20-10-147 were not met. Yet it is clear that the purpose of Senate Bill 244 was to make it more difficult for the trustees to make transfers from the fund, not less difficult. Senate Bill 244 achieved this objective by requiring the sale of all of the district's buses before proposing a transfer from the bus depreciation fund. A construction that advances the legislative purpose is preferred over one that impedes it. Willoughby v. Loomis, 264 Mont. 44, 52, 869 P.2d 271, 276 (1994).

THEREFORE, IT IS MY OPINION:

Before school district trustees may transfer any portion or all of the district's bus depreciation reserve fund to any other fund maintained by the district, the trustees must have sold all of the district's buses and submitted the proposed transfer to the electors of the district.

Very truly yours,

MIKE McGRATH
Attorney General

mm/cdt/jym