

North Star Public School

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November 10, 2011

Kris:

Thank you for taking the time to look over the following information as per our conversation On November 9, 2011.

I have attached the current Attorney's General Opinion and the next page is the changes we Would like to see added to the Attorney's General Opinion.

I have also enclosed a copy of the Student Activity Manual that MASBO (Montana Association Of School Business Officials) endorses. This manual is used by auditors as a guideline as to how Student Activity Accounts are administered in the State of Montana.

Enclosed Student Activity Accounts from all classifications.

Held: Persons summoned for jury duty before Montana Justice Courts are entitled to statutory per diem fees for each day's attendance before the court even though dismissed before actually participating in the trial of a particular case.

November 13, 1959

Mr. Leo H. Murphy
County Attorney
Teton County
Choteau, Montana

Dear Mr. Murphy:

You have requested my opinion whether persons summoned for jury duty in the Montana Justice Courts are entitled to statutory per diem fees even though dismissed by the court during the selection of a jury panel.

I have your memorandum of authorities in support of your position that such persons are jurors in actual attendance before court within the meaning of the statutes and hence qualify for the statutory compensation.

Section 25-403, RCM, 1947, provides compensation for jurors in courts not of record:

"Jurors in courts not of record, in both civil and criminal actions, shall receive three dollars (\$3.00) per day, but in civil actions the jury must be paid by the party demanding the jury, and must be taxed as costs against the losing party. Jurors in coroner's inquest shall receive for their services the sum of three dollars (\$3.00) per day."

The general rule applicable in construing similar statutes is stated in 50 CJS, Juries, Sec. 208:

"Unless a distinction is made between 'service' and 'attendance' a juror is entitled to his per diem allowance for all the time he is necessarily in attendance on the court, whether or not during all of this time he is actually serving as a juror, or until discharged, although he is not called on to serve at all."

In *Mason v. Culbert*, 108 Cal. 247, 41 Pac. 464, the California Court of Appeals decided the same question on nearly an identical statute. The Court said:

"A juror may be in attendance upon court without being impaneled to try any cause, and for every day of such attendance the statute authorizes him to be compensated. The per diem provided by the statute is not intended to be in the nature of a salary

for the time that he is serving as a juror, or as wages for trying a cause, but rather as compensation for the time during which he is withdrawn from his ordinary avocation and in actual attendance upon the court." (Emphasis added) See also *Jackson v. Beahr*, 138 Cal. 266, 71 Pac. 167; *Bloch v. Multnomah County*, 25 Or. 169, 35 Pac. 30.

The above cases are indicative of the degree of jury participation which constitutes actual court attendance entitling a person to a day's compensation as a juror.

It might also be contended that a person cannot be a juror within the meaning of the statute without first being impaneled and sworn as such. However, our codes recognize persons as being jurors even though excused during the selection of the ultimate jury panel. For example, Section 94-7111, RCM, 1947, provides:

- "A challenge to an individual juror is either—
1. Peremptory, or,
 2. For Cause." (Emphasis added)

Further, an *Bouvier's Law Dictionary* (Rawles Revision) a juror is defined as:

"Any person selected and summoned according to law to serve in that capacity, whether the jury has been actually impaneled and sworn or not."

When a person is summoned for jury duty from the county, he is compelled to neglect his business often at considerable expense and inconvenience, to attend court in obedience to its order. During the time that such individuals are withdrawn from their ordinary vocation they are in actual attendance upon the court within the meaning of our statutes.

It is therefore my opinion that persons summoned for jury duty before Montana Justice Courts are entitled to their statutory per diem fees for each day's attendance before the court even though dismissed during the selection of a jury panel for the trial of a particular case.

Very truly yours,
FORREST H. ANDERSON
Attorney General

1/01/28
Opinion No. 44

SCHOOLS AND SCHOOL DISTRICTS: Funds; extra-curricular funds, investment of not authorized—SCHOOLS AND SCHOOL DISTRICTS;

Funds: investment of extra-curricular funds not authorized—SCHOOLS AND SCHOOL DISTRICTS; Funds: extra-curricular funds are trust funds—SCHOOLS AND SCHOOL DISTRICTS; Funds: expenditures from extra-curricular funds authorized only for purpose for which fund set up—SCHOOLS AND SCHOOL DISTRICTS;

Funds: extra-curricular funds, administered by Board of Trustees—SCHOOLS AND SCHOOL DISTRICTS; Fees: extra-curricular activity fees should be charged only in amount needed for one school year—Section 75-1632, RCM, 1947—Section 75-1632.1, RCM, 1947

Held: 1. It is not a proper purpose of public school extra-curricular activities to accumulate funds for investment.

2. That the interest realized from investments heretofore made, should be distributed to each contributing funds on a pro rata basis.

3. That extra-curricular school activity funds should be administered by the Board of Trustees of the school and the student government association.

November 16, 1959

Mr. R. E. Towle
State Examiner
State Capitol
Helena, Montana

Dear Mr. Towle:

You have requested my opinion concerning the propriety of the purchase of bonds by the student association of a high school. You also asked what disposition should be made of the interest from bonds which have in fact been purchased. You advise me that the funds so invested were realized from assessments and fees paid into the fund by student organizations and also from profits of student activities.

The only statutory references to funds which are designated "extra-curricular funds" are found in Section 75-1632, RCM, 1947, as amended, and Section 75-1632.1, RCM, 1947, wherein it is provided that it is the duty of the trustees to provide for a system of bookkeeping and annual auditing of the funds. The auditing may be done by your office or by a qualified accountant employed by the district.

The assessment of fees from students for outside activities is recognized as being proper notwithstanding our schools are "free."

(47 Am. Jur. 405). Such funds which are accumulated are school funds and are impressed with a trust. In 47 Am. Jur. 363, the text states:

"Where the law provides for separate funds for distinct purposes, each fund is earmarked with a trust for the particular purpose for which it is raised, and they cannot be commingled or used interchangeably."

It is a logical conclusion that a fund accumulated by assessments of the students or student activities should be used for the specific purpose or purposes for which the charge was made and the building up of a surplus for investment purposes, however laudable the type of investment, is a variance from the authorized purpose or purposes for which it may be expended. An analogous situation is that found in *Rogge vs. Petroleum County*, 107 Mont. 36, 80 Pac. (2d) 380, wherein it was held that taxes should be levied by a county only in an amount sufficient for the current year and to meet the needs of the current budget. Applying this rule to the facts you present it must be concluded that fees should not be charged students in excess of the amount necessary to conduct the extra-curricular activities of any one school year.

The foregoing is not to be construed as prohibiting an entering class of students from accumulating a fund to be expended by that class in a subsequent year for a trip or some other group activity. Each year's portion of the fund would be a valid purpose for that year.

If in fact investments have been made, the interest from the investments should be distributed on a pro rata basis to each of the funds which contributed to the money which was used for the purchase of the investments.

As our statutes are silent as to the exact method of administering extra-curricular funds, it would appear to be reasonable that the trustees and the student government body should agree on the expenditure of the money being limited, however, by the purpose or purposes of the trust.

It is, therefore, my opinion:

1. It is not a proper purpose of public school extra-curricular activities to accumulate funds for investment.
2. That the interest realized from investments heretofore made, should be distributed to each contributing fund on a pro rata basis.
3. That extra-curricular school activity funds should be administered by the Board of Trustees of the school and the student government association.

Very truly yours,
FORREST H. ANDERSON
Attorney General

INVESTMENTS

As stated previously, extracurricular funds are accumulated by students' assessments and activities and should be used for the specific purpose or purposes for which the charge was made. Except in rare instances, therefore, surplus moneys should not be allowed to accumulate. Attorney General's Opinion Number 44, Volume 28, holds that:

"It is not a proper purpose of public school extracurricular activities to accumulate funds for investment."

It would appear that the building up of a surplus for investment purposes is a variance from the authorized purpose or purposes for which it may be expended. Therefore, students should not be charged fees in excess of the amount necessary to conduct the extracurricular activities of any one school year.

However, [REDACTED] there is no reason why a fund account, being accumulated for a specific purpose, could not be invested until the money is needed. Interest earned on such an investment must be deposited to the fund from which the investment is made. We also have no objection to the short term investment of that portion of the combined cash balance of all fund accounts determined to be excess by current cash flow projections. Such investments should be easily converted into cash. The interest on this type of investment must be distributed in accordance with Attorney General's Opinion Number 44, Volume 28, which holds:

"That the interest realized from investments heretofore made should be distributed to each contributing fund on a pro rated basis."

Such pro rated distribution may be accomplished in several ways, so long as reasonable equity is achieved. For simplification, such distribution may be based on the cash balance in each contributing fund at the time the interest is received.

Investments of the extracurricular fund must not be removed from the fund account balances, but continued to be a part of the fund account or account.

Or

This is the wording we would like to have added to the Attorney General's Opinion.

The School District may also put interest realized from investments into a separate student account titled Interest: From this account the district can pay for all costs associated with administering student activity accounts. If and when the account reaches a substantial amount then the district, with input from student representatives, may purchase other equipment/supplies from this account that enhances the education of students.