

law. See 1966 P.A. 326, as amended, M.C.L.A. 438.31 et seq.; M.S.A. 19.15(1) et seq.

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**SCHOOLS:** Authority of a board of education to adopt a deficit budget or to operate at a deficit.

A board of education is prohibited by law from knowingly adopting a budget in which proposed expenditures exceed funds on hand and reasonably estimated anticipated revenues, including borrowed money to the extent the funds are borrowed in anticipation of either property tax or state school aid revenues to be received in the fiscal year in which such borrowing occurs.

A board of education is prohibited by law from operating at a deficit.

A board of education is operating at a deficit when its actual expenditures for a given fiscal year exceed funds on hand, actual revenues and sums which it has lawfully borrowed during the course of the fiscal year.

In the absence of concealment or fraud, board of education members are not personally liable on contracts made by them on behalf of the school district they serve.

A board of education of a second class school district borrowing money for school operating purposes in anticipation of the collection of taxes for the next fiscal year is limited to borrowing money for necessary operating expenses that could not reasonably have been foreseen and provided for in the tax levy for the current fiscal year.

No. 4673

September 23, 1971.

Hon. Garland Lane  
State Senator  
The Capitol  
Lansing, Michigan

You have requested my opinion on the following five questions:

1. Can a Board of Education knowingly adopt a budget which calls for expenditures in excess of current year income plus balances and sums which it may lawfully borrow?
2. Can a Board of Education lawfully operate at a deficit?
3. When is a Board of Education operating at a deficit?
4. Are Board of Education members personally liable for obligations incurred by the Board in excess of its ability to pay if the obligations are otherwise the lawful obligations of the Board?
5. May a Board of Education of the second-class borrow for any temporary school purposes under M.S.A. 15.3158 regardless of whether the expenditures could have been 'reasonably foreseen' (see Act 202 of Public Acts of 1943, as amended)?

Further, your opinion request indicates that boards of education are concerned about whether, in periods of financial crisis, they may operate their school districts at a deficit or, alternatively, whether they must reduce expenditures and operate within available funds.

In answering question one, it must first be observed that Section 35a of the state school aid act, 1957 P.A. 312, as added by 1969 P.A. 22, M.C.L.A. 388.645a; M.S.A. 15.1919 (85a), provides:

“School districts receiving moneys under this act shall not adopt or operate under a deficit budget.”

It is a basic rule of statutory interpretation that the courts will give effect to the plain meaning of statutes enacted by the legislature. *Jones v. Grand Ledge Public Schools*, 349 Mich. 1, 9, 10 (1957). Here, the legislature has commanded, in plain and unambiguous terms, that boards of education may not adopt or operate under a deficit budget if their respective school districts receive any state school aid funds. This statutory prohibition extends to virtually all school districts since in the 1970-71 fiscal year only 21 of approximately 630 school districts did not receive any state school aid. Moreover, it must be emphasized that those few school districts receiving no state aid nevertheless lack lawful authority to adopt or operate under a deficit budget. See 1 O.A.G., 1959, No. 3416, p. 147 (August 1, 1959).

A budget is an estimate of both expenditures and revenues with which to pay such expenditures during the ensuing fiscal year. Const. 1963, art. 7, § 32 and O.A.G. 1965-66, No. 4392, p. 42, 45 (March 23, 1965).

The estimates of expenditures and revenues should be based upon reasonable expectations for the next fiscal year. A deficit budget is one in which proposed expenditures exceed funds on hand and anticipated revenues for the fiscal year in question. O.A.G. No. 3416, supra. In that opinion, the Attorney General ruled, in connection with the adoption of a county budget, that proposed expenditures could not exceed funds on hand and anticipated revenues with the excess expenditures to be paid by borrowing money.

The legislature has authorized a board of education to borrow money in anticipation of the collection of taxes for either the current or the next fiscal year. See Section 567 of 1955 P.A. 269, M.C.L.A. 340.567; M.S.A. 15.3567, and Chapter IV, Sections 1, 2 and 3 of the Municipal Finance Act, 1943 P.A. 202, as amended, M.C.L.A. 131.1 et seq.; M.S.A. 5.3188(1) et seq. The legislature has also authorized a board of education to borrow money and pledge state school funds to be received in either the current or the next fiscal year in payment of such borrowing. See Section 567a of 1955 P.A. 269, as amended, M.C.L.A. 340.567a; M.S.A. 15.3567(1).

A budget may include expenditures to be paid for with borrowed money, provided that the borrowing is in anticipation of either property tax or state school aid revenues to be received during the fiscal year in which the borrowing occurs. In this context, expenditures for the fiscal year in question are matched with revenues received during the same fiscal year.

However, a budget may not include expenditures to be met with money borrowed in anticipation of property tax or state school aid revenues to be

received in the fiscal year following the fiscal year in which such borrowing occurs. In this context, expenditures for the fiscal year in question are not matched with revenues received during the same fiscal year. The statutory authority to borrow money in anticipation of either property tax or state school aid revenues to be received in the next fiscal year does not, either expressly or by necessary implication, encompass the authority to *adopt a budget* in which proposed expenditures are to be paid for by borrowing money in anticipation of either property tax or state school aid revenues to be received in the fiscal year following the fiscal year in which the borrowing occurs. Rather, the purposes behind allowing a board of education to borrow money in one fiscal year, to be repaid with revenue received in the next fiscal year, are to enable a board of education to meet unforeseeable expenses or to enable a board of education to solve its cash flow problems by obtaining money to meet its obligations as they become due. Further, it should be observed that such school district borrowing has the effect of decreasing, not increasing, funds available for school district operating purposes for the reason that such loans are to be repaid with interest.

Section 35a of 1957 P.A. 312, as added by 1969 P.A. 22, *supra*, quoted above, clearly prohibits a board of education from adopting a deficit budget. A deficit budget is a budget in which proposed expenditures exceed funds on hand and anticipated revenues for the ensuing fiscal year. Further, a budget may not include proposed expenditures, over and above funds on hand and anticipated revenues, to be paid for with borrowed funds. O.A.G. No. 3416, *supra*. In light of the statutory authority conferred upon a board of education to borrow money in anticipation of either property tax or state school aid revenues to be received in the fiscal year in which the borrowing occurs, it must be concluded that a budget may include expenditures to be paid for with such borrowed funds. However, a budget may not include proposed expenditures to be paid for with funds borrowed in anticipation of either property tax or state school aid revenues to be received in the fiscal year following the fiscal year in which such borrowing occurs. Thus, in answer to your first question, it is the opinion of the Attorney General that a board of education is prohibited by law from knowingly adopting a budget in which proposed expenditures exceed funds on hand and reasonably estimated anticipated revenues, including borrowed money to the extent the funds are borrowed in anticipation of either property tax or state school aid revenues to be received in the fiscal year in which such borrowing occurs.

Your second and third questions are related and, thus, will be discussed together. In contrast to the first question, which dealt, in substance, with the adoption of a deficit budget, these two questions relate to actually operating a school district at a deficit. The language of Section 35a of 1957 P.A. 312, as added by 1969 P.A. 22, *supra*, prohibits not only adopting a deficit budget but also *operating* under a deficit budget. This legislative command clearly precludes a board of education from operating its school district at a deficit during the course of a fiscal year. Any other interpretation of this statutory section would subvert its manifest purpose in that a board of education could, after adopting a balanced budget,

proceed to operate at a deficit by making expenditures without regard to actual revenues received during the course of the fiscal year.

However, for purposes of defining an operating deficit, as contrasted with a deficit budget, under Section 35a of 1957 P.A. 312, as added by 1969 P.A. 22, supra, it must be recognized that the legislature has authorized a board of education to borrow money to be expended in a current fiscal year in anticipation of revenues to be received in a subsequent fiscal year. Pursuant to Section 567 of 1955 P.A. 269, supra, and Chapter IV, Sections 1 and 2 of the Municipal Finance Act, as amended, supra, a board of education may, subject to the prior permission of the Municipal Finance Commission, borrow for necessary operating expenses that could not reasonably have been foreseen, in anticipation of the collection of taxes for the next fiscal year, up to the limit on the amount of such borrowing fixed by the statute. In addition, pursuant to Section 567a of 1955 P.A. 269, as added by 1968 P.A. 316, supra, boards of education may, with the prior approval of the Superintendent of Public Instruction, borrow money during the last three months of a fiscal year and pledge in payment thereof up to fifteen percent of the state school aid funds to be received by the school district during the next fiscal year.

The statutory sections referred to in the preceding paragraph are in *pari materia*, as they all deal with financing public education, and thus they must be construed together in an attempt to harmonize their provisions. *Wayne County v. Auditor General*, 250 Mich. 227, 232, 233 (1930). Reading these statutory provisions together, it must be concluded that during the course of a fiscal year, a board of education may, in certain circumstances, lawfully make expenditures in excess of funds on hand and revenues received during the fiscal year without violating the prohibition against operating at a deficit contained in Section 35a of 1957 P.A. 312, as added by 1969 P.A. 22, supra.

It must be emphasized that, when a school district borrows money to be expended in the current fiscal year in anticipation of revenue to be received in the next fiscal year, the effect is to decrease by the amount of the borrowing plus interest the revenue available to finance the educational program of the school district in the next fiscal year. The budget for the next fiscal year must include, as an expenditure, payment of the money plus interest borrowed in the preceding fiscal year. Further, as stated above, the budget for the next fiscal year may not include expenditures to be met with funds borrowed during such fiscal year. Thus, such borrowing, absent a corresponding increase in estimated revenues for the next fiscal year, necessitates budgeting expenditures for the educational program in the next fiscal year at a lower level than was the case in the preceding fiscal year.

In answer to your second question, it is the opinion of the Attorney General that Section 35a of 1957 P.A. 312, as added by 1969 P.A. 22, supra, prohibits a board of education from operating at a deficit.

In answer to your third question, it is the opinion of the Attorney General that a board of education is operating at a deficit, in contravention of Section 35a of 1957 P.A. 312, as added by 1969 P.A. 22, supra, when its actual expenditures for a given fiscal year exceed funds on hand, actual

revenues and sums which it has lawfully borrowed during the fiscal year. Consequently, to the extent that it is reasonably apparent to a board of education during the course of a fiscal year that actual expenditures will exceed funds on hand, actual revenues and sums which it has received permission to borrow, if any, for the fiscal year in question, Section 35a of 1957 P.A. 312, as added by 1969 P.A. 22, supra, imposes a duty upon boards of education to reduce expenditures by such excess. This duty is somewhat similar to the duty imposed upon the Governor and the appropriating committees of the House and Senate under Const. 1963, art. 5, § 20, to reduce expenditures authorized by appropriations whenever it appears that actual revenues for a fiscal period will be below the estimated revenues on which appropriations for that period were based.

I assume, in answering your fourth question, that the question contemplates a situation in which a party with whom a board of education has contracted on behalf of the school district for goods received or services rendered is suing the individual members of the board for money damages for the reason that the school district lacks the funds to pay the contractual obligation in question. We pass on your question in that context only and we do not pass on the question of the liability of the board members to the school district. Research has failed to disclose any statutory enactments of the legislature covering this situation. The rule adopted by the Michigan Supreme Court is that, in the absence of concealment or fraud, public officers who make contracts on behalf of public bodies are not personally liable on such contracts. *Lyon v. Irish*, 58 Mich. 518 (1855).

It should also be emphasized that members of a board of education who *knowingly* and *intentionally* incur obligations in excess of their school district's ability to pay are in contravention of the prohibition against operating at a deficit contained in Section 35a of 1957 P.A. 312, as added by 1969 P.A. 22, supra. Thus, such board members would be subject to the criminal penalties imposed in Section 36 of 1957 P.A. 312, M.C.L.A. 388.646; M.S.A. 15.1919(86), which provides:

"Any school official or member of any board of education, or other person, neglecting or refusing to do or perform any act required by him by this act, or violating or knowingly permitting or consenting to the violation of the provisions of this act, shall be deemed guilty of a misdemeanor, and on conviction shall be punished by a fine not to exceed \$500.00 or by imprisonment in the county jail not exceeding 3 months, or both such fine and imprisonment, in the discretion of the court."

In addition, such conduct by members of a board of education would render them subject to removal from office under the provisions of Section 253 of 1955 P.A. 269, M.C.L.A. 340.253; M.S.A. 15.3253, which provides:

"The superintendent of public instruction may remove from office, upon satisfactory proof and after at least 10 days' notice to the party implicated, any member of any board who shall have illegally used or caused to be used or disposed of in any manner whatever any of the public moneys entrusted to his charge, or who shall persistently and

without sufficient cause refuse or neglect to discharge any of the duties of his office, . . .”

Pursuant to Section 14 of 1964 P.A. 287, M.C.L.A. 388.1014; M.S.A. 15.1023(14), this removal power is now vested in the State Board of Education rather than the Superintendent of Public Instruction.

In answer to your fourth question, it is the opinion of the Attorney General that, in the absence of concealment or fraud, board of education members are not personally liable to third parties on contracts made by them on behalf of the school district they serve.

Turning to your fifth question, Section 158 of 1955 P.A. 269, as last amended by 1968 P.A. 316, M.C.L.A. 340.158; M.S.A. 15.3158, provides:

“The board may:

“(a) Borrow, *subject to the provisions of Act No. 202 of the Public Acts of 1943, as amended*, for temporary school purposes such sums of money and on such terms as it may deem desirable and give notes of the district therefor.” [Emphasis supplied]

This statutory provision, authorizing borrowing for temporary school purposes by boards of education of second class school districts, plainly makes such borrowing subject to the provisions of the Municipal Finance Act, 1943 P.A. 202, as amended, *supra*.

In Chapter IV, Section 1 of the Municipal Finance Act, *supra*, the legislature has authorized school districts, subject to the prior permission of the Municipal Finance Commission, to borrow money in anticipation of the collection of taxes for either the current fiscal year or for the next succeeding fiscal year. Under Chapter IV, Section 3 of the Municipal Finance Act, as amended, *supra*, a school district may borrow in anticipation of the collection of taxes for the current fiscal year without regard to whether the expenditures to be made with borrowed funds were reasonably foreseeable at the time of the tax levy for the current fiscal year.

However, Chapter IV, Section 2 of the Municipal Finance Act, *supra*, which authorizes school districts to borrow money in anticipation of the collection of taxes for the next succeeding fiscal year, provides, in subsection (a), as follows:

“Where the money so borrowed is for operating it shall be used only for the purpose of paying such necessary operating expenses of the municipality *as could not reasonably have been foreseen and adequately provided for in the tax levy for the then current fiscal year . . .*”

[Emphasis supplied]

Based upon the plain meaning of this statutory section, it is crystal clear that, when a board of education borrows money for operating purposes in anticipation of the collection of taxes for the next succeeding fiscal year, it is limited to borrowing money for operating expenses that could not reasonably have been foreseen and provided for in the tax levy for the current fiscal year. *Jones v. Grand Ledge Public Schools*, *supra*.

In summary, Section 158 of 1955 P.A. 269, as last amended by 1968 P.A. 316, supra, authorizes a board of education of a second class school district to borrow money for temporary school purposes subject to the provisions of the Municipal Finance Act, as amended, supra. Under Chapter IV, Section 2 of that statute, a school district borrowing for operating purposes in anticipation of the collection of taxes for the next succeeding fiscal year is expressly limited to operating expenses that were not reasonably foreseeable at the time of the tax levy for the current fiscal year.

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**CIVIL SERVICE:** Power of civil service commission to fix rate of retirement pensions.

**CONSTITUTIONAL LAW:** Authority of civil service commission to fix rates of compensation.

In the exercise of its power to fix rates of compensation for all classes of positions in the classified service, the civil service commission may adopt a retirement plan that supplements the retirement plan for state employees established by the legislature.

No. 4732

December 29, 1971.

Representative John Bennett  
House of Representatives  
The Capitol  
Lansing, Michigan

Referring me to Article XI, Section 5, Paragraphs 4 and 6, of the Michigan Constitution of 1963, you have requested my opinion on the following question:

"Is the amount of pension benefits payable by the State of Michigan to State Employees on the classified Civil Service deemed compensation under paragraphs 4 and 6 of Section 5, Article XI?"

The pertinent portions of the constitutional provisions referred to provide as follows:

"The commission shall classify all positions in the classified service according to their respective duties and responsibilities, *fix rates of compensation for all classes of positions*, approve or disapprove disbursements for all personal services, determine by competitive examination and performance exclusively on the basis of merit, efficiency and fitness the qualifications of all candidates for positions in the classified service, make rules and regulations covering all personnel transactions, and regulate all conditions of employment in the classified service.

" \* \* \*

"Increases in *rates of compensation* authorized by the commission may be effective only at the start of a fiscal year and shall require prior