

**OPINION**  
**42-21**

August 29, 1942 (OPINION)

APPROPRIATION

RE: Equalization Fund

This is in reply to your letter of August 28th addressed to the Attorney General, relative to chapter 75 of the Session Laws of 1941.

This is the appropriation bill which appropriates any money in the State Treasury belonging to the Retail Sales Tax Fund under and pursuant to the State Equalization Fund Law. The specific item to which you have reference is the item of \$900,000 appropriated for the payment of Teacher Unit Basis.

Chapter 255 of the Session Laws of 1941, known as the State Equalization Fund Law creates the State Equalization Fund and provides that the State Treasurer shall credit to such fund all sums appropriated by the Legislature for that purpose from any source of income whatever and in case of direct biennial appropriations, the State Treasurer shall apply one-half of the total appropriation of the biennium to each year thereof, and the amount so applied for each year, plus all accumulations from other sources, shall be construed to be the amount available in such fund for the current year.

Section 2 of said chapter 75 provides:

"APPROPRIATION.) Should the money coming into the 7/12 share of the Retail Sales Tax Fund to be expended under and pursuant to the Equalization Fund Law exceed the appropriation above made plus the appropriation for High School Correspondence Work, either because of increased sales tax revenue or because of the full amount of the other items of the appropriation not being necessary for the full payment thereof, such additional money or so much thereof as may be necessary to make full teacher unit payment is appropriated to the Payment on Teacher-unit Basis."

You state that the sum of \$296,957.07 has already been paid from the appropriation of Teacher-unit, and you now have an additional voucher of certification from the Superintendent of Public Instruction in the sum of \$282,902.41. The amount already paid plus the amount of \$282,902.41 certified now, will total \$579,859.48, which is more than one-half of the specific appropriation on a Teacher-unit basis of \$900,000.00. Your question is whether or not at this time, you may issue a warrant on the certification of \$282,902.41.

The total amount that can safely be paid on a Teacher-unit basis during the first year of the biennium is one-half of \$900,000.00 or \$450,000.00, unless there is actually now sufficient money in the seven-twelfths share of the Retail Sales Tax Fund for the payment of all of the other items enumerated in chapter 75, plus the appropriation for High School Correspondence Work. In other words, you cannot speculate upon the amount that probably will come into such fund through the collection of sales taxes, but the money must in fact, be on hand in the Treasury in a sufficient sum to pay all of the other items specified, before more than one-half of the specific amount of \$900,000.00 can be paid out for the first year of the biennium.

ALVIN C. STRUTZ  
Attorney General