

N.D.A.G. Letter to Sanstead (Feb. 4, 1991)

February 4, 1991

Dr. Wayne G. Sanstead
Superintendent
Department of Public Instruction
State Capitol
600 East Boulevard Avenue
Bismarck, ND 58505

Dear Dr. Sanstead:

Thank you for your December 18, 1990, letter requesting my interpretation of certain provisions of subsection 2 of N.D.C.C. § 15-60-03 as set out in the following sentence which was added to that subsection by the Legislative Assembly in 1981:

In determining whether a school district has an existing indebtedness to the maximum limit permitted by law for purposes of this section, the value of taxable property means twice the taxable value of all taxable property in the school district.

1981 N.D. Sess. Laws ch. 806, § 1.

Before specifically addressing your concerns, it might be helpful to generally review N.D.C.C. ch. 15-60.

N.D.C.C. ch. 15-60 establishes a state school construction fund (the "Fund") to be administered by the State Board of Public School Education (the "Board"). The Fund is to be maintained by the Board at the Bank of North Dakota (the "Bank"). The Board may use the Fund to buy down or reduce the interest rate on a loan made by the Bank to a school district to pay the cost of a project approved by the Board under N.D.C.C. ch. 15-60. N.D.C.C. § 15-60-03(1).

Because some references in N.D.C.C. ch. 15-60 with respect to the manner in which a project is to be financed with the aid of a buydown from the Fund are unclear, it is helpful to review the legislative history of N.D.C.C. ch. 15-60.

Until amended in 1989, chapter 15-60 provided that the Board (the term "Board" initially referred to the State School Construction Board; however, a 1955 amendment designated the State Board of Public Education as the "Board") had the authority to: (1) hold title to a project in its own name and finance the entire cost of the project with Fund moneys, (2) lease a project to a school district, provided that the lease rentals to be paid by the school district were in the full amount expended by the Board from the Fund with interest at 2½ percent per year, and (3) convey title to a project to a school district upon full payment of

all rentals by the school district.

Although N.D.C.C. § 15-60-05, which contained the provisions set out in the above paragraph, was repealed with the enactment of H.B. 1002 in 1989, several indirect references to the financing of the cost of a project through a lease/purchase transaction remain. These references, read with the provisions formerly set out in N.D.C.C. § 15-60-05, provide that a project must still be financed through a lease/purchase transaction.

The primary change effected by H.B. 1002 is that Fund moneys are no longer available to pay the full cost of financing a project. Fund moneys may only be used to pay a portion of the interest expense on a loan received by a school district from the Bank to finance a project. Title to a project must still be held by the Board. However, the loan proceeds received by a school district from the Bank, rather than Fund moneys, are to be used to pay the cost of financing a project.

N.D.C.C. § 15-60-03(2) contains several provisions with respect to the terms of a loan and eligibility for an interest rate buydown from the Fund. For ease of reading and understanding, I am setting these out separately as follows:

1. A school district must levy an amount sufficient to repay a loan from the Bank over a term not to exceed 20 years.
2. The amount of a loan may not exceed the lesser of 30 percent of the taxable valuation of a school district or \$5,000,000. (This provision does not expressly state that the amount of a loan may not exceed the lesser of these two amounts, but it appears to me from a reading of prior language that this provision should be read in this manner to give full effect to the language.)
3. A school district's levy for its building fund must not be less than 10 mills.
4. The Board will use the moneys in the Fund to buy down the interest rate on a loan to 2½% per year by paying the Bank the difference between the interest rate charged by the Bank and 2½% with a school district responsible for paying the principal amount of a loan with interest at 2½% per year.
5. The tax levy required to repay a loan must be maintained over the term of the loan.
6. A school district must have an existing indebtedness to the maximum limit permitted by law at the time a loan is made.

The sentence which is the subject of your letter comes into play with respect to provision

number 6.

The first step in interpreting the meaning of the provisions of this sentence is to determine the meaning of the phrase "an existing indebtedness to the maximum limit permitted by law." Prior to a 1979 amendment, a school district was required to have an existing bonded indebtedness to the maximum limit permitted by law at the time a loan was made. The North Dakota Supreme Court, in Halldorson v. State School Const. Fund, 224 N.W.2d 814 (N.D. 1974), decided the question of what constituted the maximum limit. The Halldorson court calculated the maximum limit of bonded indebtedness in accordance with N.D. Const. art. X, § 15.

N.D. Const. art X, § 15 provides, in part:

The debt of any . . . school district . . . shall never exceed five per centum upon the assessed value of the taxable property therein; provided that . . . a school district, by a majority vote may increase such indebtedness five percent on such assessed value beyond said five per centum limit. . . .

N.D.C.C. ch. 15-48 sets out the manner in which an election to increase the debt limit of a school district is to be conducted.

The maximum limit was arrived at by multiplying the assessed value of the taxable property in the school district by 10 percent (the district had increased its debt limit from five percent to 10 percent pursuant to N.D. Const. art. X, § 15 and N.D.C.C. ch. 15-48).

The word "bonded" was removed from N.D.C.C. § 15-60-03(2) in 1979 so that the entire indebtedness of a school district could be taken into account to determine whether the maximum limit was reached. Hearing on S. 2128 Before the Senate Comm. on Education, 46th Leg. (January 10, 1979) (Statement of Howard Snortland).

The 1981 Legislative Assembly amended the last sentence of N.D.C.C. § 15-60-03(2) twice. 1981 N.D. Sess. Laws ch. 224, § 1, amended the sentence to read:

In determining whether a school district has an existing indebtedness to the maximum limit permitted by law for purposes of this section, the value of taxable property means twice the net value of all taxable property in the school district rather than six times such value as provided in subsection 4 of section 21-03-01.

N.D.C.C. § 21-03-01(4) was also amended in 1981 to read:

4. "Value of taxable property" or "the assessed value" of a municipality shall mean six times the net value of all taxable property in such municipality as determined pursuant to section 57-02-28, provided that these terms may never mean more than market value of the property.

1981 N.D. Sess. Laws ch. 270, § 1.

The amendment to N.D.C.C. § 21-03-01(4) referred to calculating the "value of taxable property" pursuant to N.D.C.C. § 57-02-28, which section was also amended twice in 1981.

These amendments and their internal references show an intended relationship between N.D.C.C. § 15-60-03(2) and the definition for "value of taxable property" found in N.D.C.C. § 21-03-01(4).

Later, in the reconvened 1981 Legislative Assembly, these same sections were again amended, but in one bill. N.D.C.C. § 15-60-03(2) was amended to read as it does now. N.D.C.C. § 21-03-01(4) was amended to read:

4. "Value of taxable property" or "the assessed valuation" of a municipality shall mean the assessed value of all taxable property in such municipality as determined pursuant to chapter 57-02.

1981 N.D. Sess. Laws ch. 806, § 2.

N.D.C.C. § 15-60-03(2) provides that "value of taxable property" is twice the taxable value, rather than the assessed value as described in N.D.C.C. § 21-03-01(4), when determining eligibility for a loan from the state school construction fund.

Taxable value is determined by applying certain percentages to the assessed value. N.D.C.C. § 57-02-27. The assessed value is one-half of the true and full value. N.D.C.C. § 57-02-01(3). True and full value is the beginning point of property valuation, and bears a relationship to its actual market value. N.D.C.C. §§ 57-02-01(15) and 57-02-27.1.

The constitutional debt limit, N.D. Const. art. X, § 15, is based on a percentage of the assessed value. But, for state school construction fund purposes and the eligibility for a loan thereunder, the limit is based on twice the taxable value.

As an example, under the above-noted sections, if school district property had a true and full value of \$40,000,000, its assessed value would be \$20,000,000 and its taxable value would be approximately \$2,000,000 based on the mix of the types of property involved. Using N.D.C.C. § 15-60-03(2), the taxable value is doubled and the constitutional debt limit is applied. Therefore, in the example, if an election under N.D.C.C. ch. 15-48 had been favorable, the \$2,000,000 taxable value becomes \$4,000,000, and taken times the 10% debt limit, the result is \$400,000. This last number is the amount of debt the example school district would be required to already have at the time of the loan in order to qualify for a loan under N.D.C.C. ch. 15-60.

I trust this answers your question.

Sincerely,

Nicholas J. Spaeth

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