

N.D.A.G. Letter to Mattson (March 24, 1992)

March 24, 1992

Mr. Doug Mattson
Ward County State's Attorney
Ward County Courthouse
Minot, ND 58701

Dear Mr. Mattson:

Thank you for your December 18, 1991, letter in which you inquire first, whether a county jointly employing a county superintendent of schools with other counties may hire the superintendent on a part-time basis, and second, whether a county which does not jointly employ a county superintendent of schools with another county may hire the superintendent on a part-time basis.

The 1989 Legislative Assembly adopted House Bill No. 1640 which significantly changed the status and structure of the county superintendents of schools in North Dakota. The first of two significant changes created by the bill is that, effective January 1, 1993, the county superintendent of schools will be appointed and employed by the board of county commissioners rather than elected by the voters of the county. N.D.C.C. § 15-22-01. The second significant change is that the boards of county commissioners of two or more counties can agree to jointly employ a county superintendent of schools to perform the functions of the office. N.D.C.C. § 15-22-25. Further, any county with less than 1,000 persons over five and under eighteen years of age for the previous school year is required to combine with another county or counties to jointly employ a county superintendent of schools. Id. The statute also requires the board of county commissioners for each county to develop a plan to cooperate with the other counties to employ a superintendent of schools. If the boards of county commissioners cannot agree to share a county superintendent of schools, the superintendent of public instruction may require them to participate in a plan. Id. The plans to share a county superintendent of schools must be approved by a majority of the presidents of the school boards of each county and must be confirmed by the superintendent of public instruction. Id.

In order to assist the boards of county commissioners in adopting the plans for county superintendents of schools, the superintendent of public instruction has issued approval criteria by which the plans will be judged and approved. One of the criteria adopted by the superintendent of public instruction is that the person hired as the county superintendent of schools be employed on a full-time basis. That criterion is one of six under the heading of "organization structure" and states:

- D. Provides for a full-time person with appropriate support staff needed to carry out the program of services proposed.

Under these circumstances, you wish to know under what conditions a county can retain a part-time county superintendent of schools whether or not it jointly employs one with another county.

N.D.C.C. ch. 15-22 governing county superintendents of schools does not contain a requirement that the superintendent of schools, whether hired by a single county or jointly by several counties, be hired on a full-time basis. N.D.C.C. § 11-10-10, which deals with the salaries of county officials, including the county superintendent of schools, provides that "any county official performing duties on less than a full-time basis may be paid at a reduced salary set by the board of county commissioners." N.D.C.C. § 11-10-10(4).

A county superintendent of schools, whether hired by one county or jointly by several counties, is not required by the specific terms of the statute to be hired on a full-time basis. However, a county must have a plan approved by the superintendent of public instruction to implement the law on hiring a county superintendent of schools. N.D.C.C. § 15-22-25 gives the superintendent of public instruction discretion in the approval of those plans.

As indicated above, the North Dakota superintendent of public instruction has adopted a review criterion that biennial plans submitted by the counties provide for the county superintendent of schools to be hired on a full-time basis. The superintendent of public instruction is required by statute to confirm a plan before it can be implemented. Counties may indicate in their plan factors which mitigate against hiring a county superintendent of schools on a full-time basis, and the superintendent of public instruction may approve the plan on that basis after evaluating the plan against all the review criteria. In the event the superintendent of public instruction does not confirm a plan, the plan must be submitted to the State Board of Public School Education for final resolution. The State Board of Public School Education may also consider the mitigating factors and approve a plan which hires a county superintendent of schools on a part-time basis. The decision of the State Board of Public School Education is final. No judicial appeal is provided.

It is, therefore, my opinion that, whether or not a county jointly employs a county superintendent, a county may have a part-time superintendent only if the North Dakota superintendent of public instruction or the State Board of Public School Education approves the county's plan for employing a part-time county superintendent.

I trust this adequately responds to your question.

Sincerely,

Nicholas J. Spaeth

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