

N.D.A.G. Letter to Enget (July 24, 1992)

July 24, 1992

Mr. Wade G. Enget
States Attorney
Mountrail County
PO Box 369
Stanley, ND 58784

Dear Mr. Enget:

Thank you for your July 2, 1992, letter requesting an opinion on various issues relating to the dissolution of the Palermo School District.

You indicate in your letter that the Palermo School District has gone through dissolution proceedings as outlined in N.D.C.C. ch. 15-27.4, and that the dissolution became effective on July 1, 1992. You also indicate that during the dissolution proceedings at the county and state levels, it appeared that there was going to be less than \$10,000 left in the Palermo School District's general fund at the time the dissolution was to become effective. At this point in time, however, there is approximately \$24,000 in that fund.

The testimony given before the county committee for the reorganization of school districts (hereafter, county committee) and the State Board of Public School Education (hereafter, State Board) indicated that there would be less than \$10,000 left in the Palermo School District's general fund. Based on such understanding, the county committee, with approval by the State Board, determined that the general fund dollars should be transferred to the Stanley School District, the school district to which the Palermo School District was attached. Your question arises because of N.D.C.C. § 15-27.4-03 which provides:

Unobligated cash balance of dissolved school district - Tax credits. The unobligated cash balance in excess of ten thousand dollars which is not designated for indebtedness of any school district dissolved after January 1, 1989, is a credit for those who own property within the dissolved school district against taxes levied by the school district the dissolved school district is attached to in the year or years following the dissolution depending on the average local effort based on the previous five-year average as calculated by the county superintendent. If a school district is dissolved and attached to more than one school district, the credit that those who own property within the attached school district receive from the receiving school district must be in the same proportion to the remaining unobligated cash balance as the taxable valuation of the property bears to the total taxable valuation of the property in the school district that existed prior to dissolution.

In regard to the amount in excess of \$10,000 remaining in the Palermo School District's

general fund, the county committee did not determine that such funds were to be disposed of in accordance with N.D.C.C. § 15-27.4-03.

When the county committee and the State Board approved the dissolution of the Palermo School District and the transfer to the Stanley School District of any cash balance remaining, it was based on the understanding that there would be less than \$10,000 remaining as a cash balance. Because the credit to the property owners when the unobligated cash balance is in excess of \$10,000 is mandatory under N.D.C.C. § 15-27.4-03, had the county committee and State Board been aware that the unobligated cash balance exceeded \$10,000, they would have been required to ensure that N.D.C.C. § 15-27.4-03 was complied with. In any event, no more than \$10,000 can be transferred to the Stanley School District.

It is my opinion that the unobligated cash balance in excess of \$10,000 remaining in the Palermo School District's general fund, which is not designated for indebtedness, must be distributed in accordance with N.D.C.C. § 15-27.4-03, and not transferred to the Stanley School District. Thus, it appears that \$10,000 should be transferred to the Stanley School District and the remaining \$14,000 should be utilized as a credit for property owners in the Palermo School District against taxes levied by the Stanley School District, in accordance with N.D.C.C. § 15-27.4-03. As N.D.C.C. § 15-27.4-03 indicates, the amount over \$10,000 must be utilized as a credit against taxes and is not to be distributed directly to the taxpayers of the former Palermo School District.

I trust I have responded to your questions.

Sincerely,

Nicholas J. Spaeth

las/jfl