

**OPINION
68-305**

August 5, 1968 (OPINION)

Mr. Norman G. Tenneson

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RE: Schools - Fargo School District - Expense Accounts

This is in reply to your letter of July 31, 1968, relative to the Board of Education of the City of Fargo. You ask if we have issued an opinion as to whether school districts are included within the provisions of sections 44-08-03 through 44-08-05.1 of the North Dakota Century Code, as amended. You also ask for our opinion on the question of whether expense accounts of officers and employees of public school districts and the Fargo District are subject to this statute.

Section 44-08-03 of the North Dakota Century Code, as amended, provides:

TRAVELING EXPENSES - WHAT ALLOWED. No elective or appointive officer, employee, representative, or agent of this state, or of any of its subdivisions, agencies, bureaus, boards, or commissions, shall willfully make claim upon, or willfully receive, any public funds for traveling expenses, while engaged upon public business, in an amount in excess of that allowed by law for such travel. Where more than one public officer, employee, representative, or agent shall travel in the same car while engaged upon official duty, whether belonging to different departments, subdivisions, boards, or commissions or not, no claim shall be made for more than one mileage, such claim to be made by the owner or lessee of such car."

Section 44-08-04 refers to the expense account of each "elective or appointive officer, employee, representative, or agent of this state, or of any of its subdivisions, agencies, bureaus, boards, or commissions."

We believe that school districts, generally, must be considered as a subdivision of the State and therefore these provisions would be applicable to school districts. We are, of course, aware that the Fargo School District operates under a special law found in Chapter 15-51 of the North Dakota Century Code. In *Baldwin v. Board of Education*, 33 N.W.2d. 473 (ND 1948) the Supreme Court of this State discussed the status of this act and stated, page 482: "This Act approved March 4, 1885, did not in terms declare that the territory set off and defined thereby should constitute a 'school district'. But the act did create a civil or political subdivision such as is commonly denominated a 'school district'. The legislature specifically set off and defined a portion of territory as a division or unit to be administered as a part of the public school system by a board of education which the legislature provided should constitute a

body corporate for the purpose of performing the duties prescribed in the act in relation to the administration of public schools in the territory or district set off and defined in the act. * * * The local administrative unit so established by the territorial legislature and continued in force without interruption under the laws of the state was, we think, a school district or political subdivision within the purview of the provisions of sections 183 and 184 of the Constitution. * * * And, as has been noted, it has been so considered and recognized by the people generally and by the public officers of the state, the county, and the city, as well as by the Legislative Assembly and by this Court." (Emphasis supplied.)

While the Fargo School District may, in certain respects, be distinguished from other school districts of this State which operate under the general school laws, we would note that section 44-08-04 and other statutes pertinent thereto, are not limited to school districts as such. The statutes apply to any of the subdivisions of the State. The above cited decision of the Supreme Court leaves no doubt that they consider the Board of Education of the City of Fargo a "separate and distinct political corporation." See point number 2 of the Syllabus by the Court. The Fargo School District must, therefore, constitute a political subdivision of the State.

If there were any provisions included within Chapter 15-51 which were inconsistent with the provisions of sections 44-08-03, et seq., it is possible we would reach a contrary conclusion on the basis that a specific statute takes precedence over a general statute. However, in examining Chapter 15-51 we find nothing therein which is directly inconsistent with section 44--08-03. We would therefore conclude that the expense accounts of officers and employees of public school districts, including the Fargo District, are subject to the limitations specified in section 44-08-03, et seq.

We do not find any recent opinions relative to school districts being included within these statutory provisions. However, we trust the above discussion will adequately set forth our views on this matter.

HELGI JOHANNESON

Attorney General