

Office of the Attorney General  
State of North Dakota

Opinion No. 81-109

Date Issued: October 8, 1981

Requested by: Senator Marvin E. Sorum, Kenmare, ND

--QUESTION PRESENTED--

Whether Section 15-43-11.2 of the North Dakota Century Code authorizes a school district to require every student to purchase a season ticket for extracurricular activities whether or not the student's attendance at those extracurricular activities is optional.

--ATTORNEY GENERAL'S OPINION--

It is the Attorney General's opinion that a school district may not require every student to purchase a season ticket for extracurricular activities whether or not the student's attendance at those extracurricular activities is optional.

--ANALYSIS--

Section 15-43-11.1(1), N.D.C.C., is a general statement of public policy regarding public education. That section provides:

'15-43-11.1. PUBLIC POLICY--DEFINITION.

1. It is the policy of this state that public education shall be free. No pupil shall be denied an education because of economic inability to furnish textbooks necessary for advancement in or graduation from the public school system. No school board shall sell textbooks nor otherwise charge fees to pupils except as provided by law.

Section 15-43-11.2, N.D.C.C., authorizes the school board to charge fees in specific areas. It provides:

'15-43-11.2. AUTHORIZED FEES. A school board is authorized to require payment of the following fees:

1. A security deposit for the return of textbooks, materials, supplies, or equipment, and may require pupils to furnish personal or consumable items. A use charge may be made when the 'textbook' returned has an undue amount of wear.

2. Admission fees or charges for extracurricular or non-curricular activities where attendance is optional.
3. Fees or premiums for any authorized student health and accident benefit plan.
4. Fees for personal physical education and athletic equipment and apparel. Any pupil may provide his own equipment or apparel if it meets reasonable health and safety standards established by the board.
5. Fees in any program where the resultant product becomes the personal property of the pupil.
6. Fees for behind-the-wheel drivers education instruction.
7. Other fees and charges permitted by statute.

Sections 15-43-11.1 through 15-43-11.4 shall not preclude the operation of a school store where pupils may purchase school supplies and materials. A board may waive any fee if any pupil or his parent or guardian shall be unable to pay such fees. No pupil's rights or privileges, including the receipt of grades or diplomas, may be denied or abridged for nonpayment of fees. This shall not preclude the school district's right to withhold diplomas for student's failure to pay for costs incurred by his own negligence or choice, such as fines for damaged texts and school equipment, library fines, and materials purchased from the school at the option of the student.' (Emphasis supplied)

Section 15-43-11.2(2), N.D.C.C., allows admission fees or charges for extracurricular or noncurricular activities where attendance is optional; however, it is the Attorney General's opinion that the legislature intended to authorize these admission fees or charges only in those instances where the student actually attended the extracurricular or noncurricular activity.

In a letter dated August 7, 1979, to Mr. Howard J. Snortland, Superintendent of Public Instruction, this office concluded that '[i]f attendance is optional, then the mandatory [activity ticket] fee is presumably allowable under [Section 15-43-11.2(2)].' I interpret this statement to mean that if attendance at the extracurricular or noncurricular activity, is optional and the student desires to attend that activity, then a mandatory fee may be charged. However, a mandatory activity fee charged to a student whether or not that student desires to attend the activity is impermissible.

--EFFECT--

This opinion is issued pursuant to Section 54-1201, N.D.C.C. It governs the actions of public officials until such time as the question presented is decided by the courts.

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