

Date Issued: March 4, 1981 (AGO 81-21)

Requested by: Joseph Dietchman, Benson County State's Attorney

- QUESTION PRESENTED -

Whether transportation is a part of proper facilities to be provided under section 15-47-02.1 of the North Dakota Century Code by a school board when it discontinues a school in its district.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that the word "facilities" as used in section 15-47-02.1, N.D.C.C., can very probably include transportation if an arbitration board created under this section of law determines it to be a necessary part of the facilities that must be provided by a school district when a school is discontinued.

- ANALYSIS -

Section 15-47-02.1 provides as follows:

15-47-02.1. DISCONTINUANCE OF SCHOOLS BY SCHOOL BOARD. Any elementary or high school may be discontinued by action of the school board when proper and convenient school facilities for the pupils can be provided in some other public school. In determining what constitutes proper and convenient school facilities, the board shall consider the distance of each child from the nearest other school and all surrounding circumstances. The board may furnish transportation to the nearest school, or may pay an extra allowance over and above the schedule of payments provided for in section 15-34.2-03 or furnish the equivalent thereof in tuition or lodging at some other public school. In case of a dispute between a parent or guardian of a pupil of the school district and the board as to whether the board has furnished or arranged to furnish adequate facilities, the matter may be submitted by such parent or guardian to the board of arbitration consisting of the county superintendent of schools, one arbitrator named by the parent or guardian, and one arbitrator named by the board, and the determination of the arbitrators, after hearing, shall be binding. (Emphasis supplied).

"Facilities" is a broad term under the statute which would include transportation as one element in the overall "proper and convenient school facilities". Courts have generally construed the term "facilities" broadly. In construing a mandatory transportation section of Iowa law, the Iowa Supreme Court held that a school board could perform its duty by furnishing its own facilities or allow compensation. Riecks v. Independent School District of Danbury, 219 Iowa 101, 257 N.W. 546, 547 (1934). Teachers were held to be "necessary school facilities" in State, ex rel. Knight v. Cave, 52 P. 200 (Mont. 1898). The

term "facilities" included the "entire institutional arrangement" in an admissions discrimination case. New York University v. New York State Division of Human Rights, 378 N.Y.S. 2d. 842, 847, 84 Misc. 2d. 702 (1975). However, depending on the intent of a statute, "facilities" can be read more narrowly to mean buildings. Board of Education of Frelinghuysen Tp. v. Atwood, 62 A. 1130 (N.J. 1906).

An arbitration board's authority is to make a decision as to whether or not the school board has "furnished or arranged to furnish adequate facilities." Distance, transportation, or the lack thereof, are factors to be considered. If the arbitration board finds that "adequate facilities" have not been furnished, then that decision is binding on the school board. The arbitration board's duties are finished at that point. The school board must then provide adequate "facilities" which include a number of transportation options or payments in lieu thereof. Enforcement of the decision in the event of noncompliance would be up to the parents.

- EFFECT -

This opinion is issued pursuant to section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the question presented is decided by the courts.

ROBERT O. WEFALD
Attorney General

Prepared by: Rick D. Johnson
Assistant Attorney General