

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 81-4

Date Issued: February 3, 1981

Requested by: Howard Snortland, Former Superintendent of Public Instruction
(delivered to Dr. Joseph Crawford, Superintendent of Public Instruction)

- QUESTION PRESENTED -

Whether the State Board of Public School Education (the Board) has the authority to make an exception to its policy of first come, first served and relend money from the State School Construction Fund (the Fund) which has been prepaid to it by a school district on its loan without holding the money prepaid to the Fund for other school districts which have previously applied for money from the Fund.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that the Board has the authority to make an exception to its established policy and relend to a school district money prepaid by it to the Fund on its previous loan from the Fund without having to hold the money prepaid for school districts which have previously applied for money from the Fund.

- ANALYSIS -

Chapter 15-60 of the North Dakota Century Code governs the State School Construction Fund. The Fund is managed by the State Board of Public School Education under sections 15-60-01 and 15-60-03, N.D.C.C. Limitations on the Board's power to contract with school districts are set out in sections 15-60-03 and 15-60-04, N.D.C.C. School districts are authorized to use unexpended bond proceeds to pay advance rentals to the Fund pursuant to section 15-60-05, N.D.C.C., and section 21-03-06(4), N.D.C.C. The language of chapter 15-60, N.D.C.C., is cast in terms of "leases," hence advance "rentals" are paid. As a practical matter, parties treat the transactions as loans. See *Halldorson v. State School Construction Fund*, 224 N.W.2d 814 (N.D. 1974).

The Board has a policy of lending its limited money in the Fund to school districts on a first come, first served basis. Nothing in chapter 15-60, N.D.C.C., prohibits the Board from adopting an exception to this policy. Without an exception, a school district may delay repayment of its loan. Consequently, there would be no change in the total money available to other potential borrowers.

On January 3, 1978, in a letter to the Executive Director of the Board this office stated:

"A policy and statute are not, of course, the same thing. While there may be ample reason for such a policy administratively, it is not required as a matter of law."

The question in that case was whether chapter 15-60, N.D.C.C., allowed a school district to have two loans at the same time. This office held that there was no restriction on more than one loan to a district. In other words, a school district did not have to repay one loan before being eligible for another. A copy of that opinion is attached.

Conversely, a school district may prepay its loan and immediately reborrow the sum prepaid.

-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
Solicitor