

**LETTER OPINION
93-L-240**

August 25, 1993

Honorable Wayne G. Sanstead
Superintendent of Public Instruction
State Capitol
600 East Boulevard Avenue
Bismarck, ND 58505

Dear Superintendent Sanstead:

Thank you for your letter asking two questions about the oath or affirmation required on a statement of intent filed by parents for home schooling of their children.

In 1989, the North Dakota Legislature enacted 1989 N.D. Sess. Laws ch. 198, as temporary law, to authorize parents to home school their children. Home-based instruction became an exception to the compulsory school attendance law, N.D.C.C. ? 15-34.1-03. 1989 N.D. Sess. Law ch. 198, ? 4, described home-based instruction generally, and listed six items that must be included in an annual statement of intent filed by the parent of the home-schooled child with the superintendent of the public school district in which the child resides. Subsection 6 of 1989 N.D. Sess. Laws ch. 198, ? 4, stated:

An oath or affirmation that the parent will comply with all provisions of this chapter.

Although 1989 N.D. Sess. Laws ch. 198, ? 4, was amended by the 1993 Legislative Assembly, the language of subsection 6 was not changed. 1993 N.D. Sess. Laws ch. 188, ? 2, subsection 8. The language of that subsection specifically requires that the oath or affirmation stating that the parent will comply with all provisions of the chapter on home-schooling the child be part of the statement of intent.

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Your first question is whether it is legally correct to include in your statement of intent form the provision for taking the oath before a notary public.

"An oath is a solemn unilateral vow, made before a person authorized by law to administer oaths, to do or abstain from doing certain prescribed acts applicable to the office or duty being entered, the falsity of which is punishable by law by way of criminal sanctions." Brady v. Mayor and City Council, Laurel, Maryland, 392 A.2d 89, 92, 40 Md. App. 373 (1978).

A statutory requirement for an oath or affirmation contemplates administration of the oath by one authorized by law to administer an oath. See N.D.C.C. ? 44-05-01. A notary public is one of those persons. N.D.C.C. N.D.C.C. ?? 44-05-01, 44-06-01.

The apparent purpose of the oath or affirmation requirement is that the parent swears to follow the law on home schooling, and is made aware of the importance of the education of the child and the burdens being accepted. It is my opinion that the inclusion of the oath and the notary public jurat on the form for the statement of intent is in compliance with the oath requirement provided by law.

Your second question is whether a notary public signature is required on every statement of intent or should only be required when the statement is sent to the superintendent through the mail. The language of the oath or affirmation requirement applies to any parent who intends to home school the parent's child. The oath or affirmation requirement relates to following the law concerning home schooling and not to the method used to deliver the statement to the school superintendent. The personal presentation and delivery of a document is not related to a required documentary oath to follow the law. It is therefore my opinion that the oath or affirmation requirement and its being formalized in the statement of intent applies to all parents filing the statement of intent regardless of whether the statement of intent is hand delivered or mailed.

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Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

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