

LETTER OPINION
93-L-267

September 13, 1993

Representative Jim Torgerson
District 2
HC1, Box 22
Ray, ND 58849

Dear Representative Torgerson:

Thank you for your letter asking if 1993 House Bill 1003, section 25 (1993 N.D. Sess. Laws ch. 3, ? 25) applies to the Columbus School District even though it made a decision to close its school before the effective date of the Act. Your letter indicates the Columbus School District obtained promises from other school districts in the area to agree to waive tuition for any students going to those districts from the Columbus School District if it closed.

Prior to 1993 legislative action, North Dakota Century Code (N.D.C.C.) ? 15-40.2-04 allowed school districts to enter into written agreements with respect to certain students whereby a receiving district agreed to not charge a residence/sending district tuition for educating the children covered by the agreement. This process required the authorization of the residence district for the student to attend the receiving district (absent the application and appeal process of N.D.C.C. ? 15-40.2-05).

1993 Senate Bill 2187 (1993 N.D. Sess. Laws ch. 196) amended N.D.C.C. ?? 15-40.2-01, 15-40.2-02, and 15-40.2-04. This bill was finally passed by the Legislature on March 8, 1993. Final Bill Status Report, 53rd N.D. Leg. Assembly, p. 201 (1993). Senate Bill 2187 amended N.D.C.C. ? 15-40.2-01 by creating a new subsection which states:

2. When a school district ceases to provide

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educational services to an entire grade level, the students in that grade level may attend school at a public school of their choice, outside their district of residence without going through the procedures outlined in section 15-40.2-05. The school district of residence shall either pay tuition or seek a tuition waiver from the admitting school district.

The amendment to N.D.C.C. ? 15-40.2-04 made by 1993 Senate Bill 2187 allowed a school district to accept students from another district that had ceased to provide the students' grade level without charging tuition for educating the students.

1993 House Bill 1003, section 25, also amended N.D.C.C. ? 15-40.2-04. This bill was finally passed by the Legislative Assembly on April 24, 1993. Final Bill Status Report, 53rd N.D. Leg. Assembly, p. 2 (1993). The amendment made by 1993 House Bill 1003 to N.D.C.C. ? 15-40.2-04 allows a school district to accept a student from another district without payment of tuition if the sending district offers the same grade level as that in which the student desires enrollment in the admitting district.

Both 1993 Senate Bill 2187 and section 25 of 1993 House Bill 1003 became effective August 1, 1993. Because House Bill 1003 was enacted by the Legislative Assembly later than Senate Bill 2187, the terms of House Bill 1003 are controlling with respect to the amendment made to N.D.C.C. ? 15-40.2-04 if the two bills are in irreconcilable conflict. N.D.C.C. ? 1-02-09.1. The amendments to N.D.C.C. ? 15-40.2-04 made by House Bill 1003 have been deemed controlling and printed in the North Dakota Century Code.

The documents attached to your letter indicate that at its November 10, 1992, meeting, the Columbus School Board voted to close its high school (grades 7 - 12) and defer a decision with respect to closing its grade school. Those documents further indicate that the school boards for Burke Central School District and Divide County School District passed motions stating they would offer tuition waivers to Columbus School District students if the Columbus School closes. You also attach a letter dated July 13, 1993, from the

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Columbus school superintendent stating he was told by the Powers Lake School District superintendent that Powers Lake School District would offer tuition-free agreements to any Columbus District students interested in going to the Powers Lake School District.

Article VIII of the North Dakota Constitution provides in part:

ARTICLE VIII
EDUCATION

Section 1. . . . the legislative assembly shall make provision for the establishment and maintenance of a system of public schools which shall be open to all children of the state of North Dakota and free from sectarian control. . .

Section 2. The legislative assembly shall provide for a uniform system of free public schools throughout the state, . . .

. . .

Section 4. The legislative assembly shall take such other steps as may be necessary to prevent illiteracy, secure a reasonable degree of uniformity in course of study, and to promote industrial, scientific, and agricultural improvements.

N.D. Const. art. VIII, ? 1, 2, 4.

Interpreting these provisions of the constitution, the North Dakota Supreme Court stated:

Thus the legislature is given the power to establish a complete and efficient system for education of the youth of this state. It is not limited in that power by any action or desire of the different communities of the state. It can provide for the boundaries and changes of boundaries of school districts, for the levy of taxes for school purposes and for such other matters as to it seems necessary in order to carry out the provisions of the constitution.

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The inhabitants of a school district have no property rights in the boundaries thereof or in the maintenance of their district. The formation of school districts is entirely within the power of the legislature."

Anderson v. Peterson, 54 N.W.2d 542, 551 (N.D. 1952).

It is therefore clear that the Legislature has full control over the creation and maintenance of school districts involving boundaries, taxes, and "such other matters as to it seems necessary in order to carry out the provisions of the constitution." The Legislature has the authority to change the ability of school districts to grant tuition waivers as it did in 1993 House Bill 1003. Effective August 1, 1993, this bill limits a school district's acceptance of tuition-free students from other districts to students from those districts that offer the same grade level in which the student in question is enrolled.

Based on upon the above, it is my opinion that 1993 House Bill 1003, section 25, as codified in N.D.C.C. ? 15-40.1-04(1)(b), applies to the Columbus School District and to its relationship with any school district which students residing in the Columbus School District seek to attend. 1993 House Bill 1003 similarly regulates the conduct of all North Dakota school districts from and after its effective date. Pre-existing agreements or arrangements made by school districts under prior law are rendered ineffective. Furthermore, the option for school districts of residence to "seek a tuition waiver from the admitting school district" when a district ceases to provide educational services to an entire grade level, as contained in Senate Bill 2187, (N.D.C.C. ? 15-40.2-01(2)) has likewise been rendered ineffective by the Legislature's subsequent passage of 1993 House Bill 1003, Section 25, which regulates the conduct of receiving school districts.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

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rel/krb
cc: Ken Kaylor
Marilyn Undhjem

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