

LETTER OPINION
93-L-75

March 10, 1993

Mr. F.C. Rohrich
Emmons County State's Attorney
PO Box 657
Linton, ND 58552

Dear Mr. Rohrich:

Thank you for your January 19, 1993, letter concerning annexation proceedings and the distribution of an unobligated cash balance in excess of \$10,000 maintained in the treasury of the Braddock School District. Your question relates to the distribution of the unobligated cash balance as refunds (as opposed to tax credits) and the persons entitled thereto.

In conversation with the Emmons County Superintendent of Schools, a member of my staff has learned the more recent history of annexation proceedings relative to the Braddock School District. Effective in July of 1991, a portion of the Braddock School District was annexed to the Steele-Dawson School District. That action was completed at that time and is not part of the current proceedings concerning the Braddock School District.

Currently, three annexation petitions concerning all of the land area in the Braddock School District have been filed by residents of the Braddock School District. If all three of these annexations are finally approved, all of the land area of the Braddock School District will be annexed to three surrounding school districts: the Hazelton-Moffit School District, the Napoleon School District, and the Steele-Dawson School District. It is my understanding that these three petitions will be heard before the county committee for the reorganization of school districts this month.

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If all three of the annexations are approved, the Braddock School District will effectively be terminated. Thus, the issue arises regarding the disposal of the Braddock School District's cash assets. North Dakota Century Code (N.D.C.C.) ? 15-27.2-04(6) provides:

6. a. If the annexation is approved by the state board, the county committee may cause a tax to be levied against each district affected inaccordance with section 15-47-21 which will equalize the several interests fairly. The unobligated cash balance in excess of ten thousand dollars not designated for indebtedness is a credit for those who own property within the annexed school district against taxes levied by the receiving school district in the year or years following the annexation depending on the average local effort based on the previous five-year average as calculated by the county superintendent. If a school district is attached to more than one school district, the credit that those who own property within the attached school district receive from the receiving school district must be in the same proportion to the remaining unobligated cash balance as the taxable valuation of the property bears to the total taxable valuation of the property in the school district that existed prior to annexation.

b. Any political subdivision required to provide a tax credit under subdivision a, as a result of an annexation occurring after January 1, 1989, may upon approval of the county commissioners, provide a cash refund in lieu of the tax credit. The school district holding the unobligated cash balance shall, at the request of the county auditor, pay to the county treasurer the amount to be paid to those who own property within the annexed district. The treasurer shall issue the refund to the owner of the property, as shown on the county's assessment list at the time of payment. If there is a lien for unpaid taxes against any property, the treasurer shall first apply the tax credit toward any outstanding balance. Any amount remaining may then be paid to the property owner. The cash refunds must be calculated proportionately to the total taxable value of the annexed district during the last year taxes were levied.

(Emphasis supplied.) N.D.C.C. ? 15-27.2-04(6)
contemplates annexation proceedings that result in all
of the land area in a school district being annexed to

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one or more school districts. N.D.C.C. ? 15-27.2-04(6) relates specifically to the distribution of any unobligated cash balance of the district in excess of \$10,000. N.D.C.C. ? 15-27.2-04(6)(a) provides that the unobligated cash balance may be applied as a credit against taxes levied by the receiving school district for those who own property in the annexed school district. If approved by the county commissioners, a cash refund may be made in lieu of a tax credit to persons that own property within the annexed district. N.D.C.C. ? 15-27.2-04(6)(b). The unobligated cash balance is paid to the county treasurer of the respective county at the request of the county auditor, and the treasurer makes refunds to the owners of property "as shown on the county's assessment list at the time of the payment." N.D.C.C. ? 15-27.2-04(6)(b). If there is a lien for unpaid taxes on the subject property at the time of the refund to be made by the treasurer, the treasurer applies the refund toward any outstanding balance due for taxes and the amount remaining may then be paid to the property owner.

It is my opinion that cash refunds to property owners within the terminated school district are to be made by the county treasurer to those persons that own the property according to the county's assessment list at the time the payment of the refund is made.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

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