

STATE OF NORTH DAKOTA
ATTORNEY GENERAL'S OPINION 94-F-08

Date issued: March 14, 1994
Requested by: Dr. Wayne G. Sanstead, Superintendent of
Public Instruction

- QUESTION PRESENTED -

Whether a group of two or more North Dakota public school districts may enter into a joint powers agreement under North Dakota Century Code (N.D.C.C.) ch. 54-40.3 to jointly-manage any functions of operating a school district.

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It is my opinion that any number of North Dakota public school districts may enter into a joint powers agreement under N.D.C.C. ch. 54-40.3 for the joint management of any functions of operating a school district except as limited in N.D.C.C. ch. 54-40.3 and as long as the identities of participating school districts are preserved in carrying out statutory duties required to be performed by school districts so the agreement is not misunderstood as a substitute for school district annexation, reorganization or dissolution.

- ANALYSIS -

N.D.C.C. ch. 54-40.3 was newly enacted in 1993 to provide tools that enable local citizens and leaders to improve the structure and process of local government. 1993 N.D. Sess. Laws ch. 401, § 1. One of the methods authorized to accomplish these purposes is a joint powers agreement between political subdivisions.

Any county, city, township, city park district, school district, or other political subdivision of this state, upon approval of its respective governing body, may enter into an agreement with any other political subdivision of this state for the cooperative or joint administration of any power or

function that is authorized by law or assigned to one or more of them. . . .

N.D.C.C. ? 54-40.3-01(1).

The 1993 Legislature also enacted N.D.C.C. ch. 40-01.1, concerning local government advisory study committees. That chapter authorized and encouraged the formation of advisory study committees by political subdivisions either individually or in cooperation with other political subdivisions. The chapter further encourages the advisory study committees to prepare a comprehensive program for the performance of local government functions and the furnishing of local government services. A study committee is authorized to consider: the need for maintaining citizen access to, control of, and participation in local government; existing land uses; the need for organized local government functions and services; trends in population density and distribution; the tax base; boundaries; and other factors that affect the provision of local government functions, services, and controls. N.D.C.C. ? 40-01.1-01. Any advisory study committee formed, whether local or in cooperation with other political subdivisions, is authorized to recommend that a local governing body or the electors thereof pursue any course of action permitted by law or home rule charter for that political subdivision. With respect to a school district, the advisory study committee could recommend:

- a. Execution of a joint powers agreement between the school district and one or more other political subdivisions or the state for the cooperative or joint administration of any service or function pursuant to chapter 54-40.3 or as otherwise specifically provided by law, including the exercise of the general powers to make contract for joint educational endeavors pursuant to section 15-47-32, or an agreement between the school district and a tribal government pursuant to chapter 54-40.2.
- b. Participation in a community or leadership development, assessment, education, planning, or training program offered by any public or private agency, institution, or organization.

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- c. An increase or decrease in the number of school board members pursuant to section 15-28-01.
- d. A cooperative arrangement pursuant to chapter 15-27.7.
- e. Sharing of officers with other school districts or other political subdivisions pursuant to chapter 11-10.3.
- f. School district restructuring, annexation, or reorganization pursuant to chapter 15-27.6, 15-27.2, or 15-27.3.
- g. Transfer of a power or function of the school district to the county pursuant to chapter 54-40.5.
- h. That any other action be taken that is permitted by law.
- i. That no action be taken.

N.D.C.C. ? 40-01.1-04(5).

The Legislature authorized and encouraged school districts to consider joint powers agreements in addition to other possible courses of action.

The sentence regarding joint powers agreements in N.D.C.C. ? 54-40.3-01(1), quoted above, twice uses the word "any." The word "any" means one or some, regardless of kind, quantity or number. The American Heritage Dictionary, 2d coll. ed., (1991), p 117. Therefore, N.D.C.C. ? 54-40.3-03(1) does not express limits on the authority of school districts as political subdivisions to enter into joint powers agreements with respect to the number of districts that may join together nor the number of powers that may be jointly administered.

An agreement made pursuant to N.D.C.C. ch. 54-40.3 "does not relieve any political subdivision . . . of any obligation or responsibility imposed by law except to the extent of actual and timely performance by a separate administrative or legal entity created by the agreement." N.D.C.C. ? 54-40.3-01(3). Further, "no essential legislative powers, taxing authority,

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or eminent domain power may be delegated by an agreement to a separate administrative or legal entity." N.D.C.C. ? 54-40.3-01(1)(c). In effect even though a school district enters into a joint powers agreement, its statutory obligations and responsibilities must still be carried out. To the extent the law allows delegation of duties as part of a joint powers agreement to a separate entity created by the agreement and to the extent that the separate entity actually performs the duties required of school boards and school districts, then the individual district need not also perform them.

Even though several school districts may agree to jointly operate some of their powers, and create a separate entity to carry out those powers, the joint powers agreement cannot alter the required legal relationships between the member districts and entities that are not a part of the agreement. For example, even though a jointly-created entity might do the required school census (N.D.C.C. ?? 15-29-08(16), 15-47-13), the census must still be done for and reported for each individual school district. Further, even though a jointly-created administrative entity might prepare fall enrollment or average daily membership reports for foundation aid purposes under N.D.C.C. ? 15-40.1-09, those reports must be prepared and filed for each individual school district. Foundation aid is also payable only to individual school districts. N.D.C.C. ? 15-40.1-05. Teacher negotiation by representatives may be authorized by N.D.C.C. ? 15-38.1-12, but any resulting contract must be executed by the individual school district board and its own individual employees. Furthermore, nonrenewal or discharge proceedings pursuant to N.D.C.C. ? 15-47-38 must still be conducted by the individual employing school district because any entity created by a joint powers agreement does not itself become a school board. Additionally, because the created entity does not itself become a school board, school districts entering into joint powers agreements would not be excused from performing statutory functions such as having required school board meetings under N.D.C.C. ? 15-29-02.

Ultimately, a joint powers agreement under N.D.C.C. ch. 54-40.3 does not allow for the identity of the member school districts to be lost. Such agreements are not substitutes for annexation, reorganization, or dissolution of school districts

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under N.D.C.C. chs. 15-27.2, 15-27.3, 15-27.4, or 15-27.6. It is notable that N.D.C.C. ch. 54-40.3 is not as broad in its intent or effect as other chapters created by the same 1993 enactment, such as N.D.C.C. ch. 54-40.4 or 54-40.5. Those chapters allow a city and county to actually combine to form a single home rule entity, or allow a political subdivision to completely transfer one of its powers to a county. If school districts wish to combine beyond merely jointly administering certain of their powers, the school boards must utilize the express statutes available for accomplishing the combination. See N.D.C.C. ch. 15-27.2, 15-27.3, 15-27.4 or 15-27.6 and N.D.C.C. ? 40-01.1-04(5).

Finally, if there is another statute regulating the joint exercise of any particular power of school districts that is the subject of a joint powers agreement under N.D.C.C. ch. 54-40.3, any procedural requirements of that other statute for performing that particular function also must be followed. (E.g., N.D.C.C. ? 15-47-32 and ch. 15-27.7.) N.D.C.C. ? 54-40.3-02(2).

- EFFECT -

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

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ATTORNEY GENERAL

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