

LETTER OPINION

94-L-287

October 25, 1994

Honorable Dan Jerome
State Senator
P.O. Box 1177
Belcourt, ND 58316-1177

Dear Senator Jerome:

Thank you for your letter asking about the authority of North Dakota public school districts to contract with federal schools for the education of students of the district and what constitutes a federal school under North Dakota law.

N.D.C.C. ? 15-29-08(3) provides authority for a North Dakota public school district to "send pupils into another school district, and to make arrangements for the education of pupils in a federal school and contract with federal officials for such education, all as provided by law." More specific authority for contracting by North Dakota public school districts is contained in N.D.C.C. ? 15-40.2-11, which provides:

15-40.2-11. Federal tuition contracts. The school board may make arrangements for the education of pupils in a federal school and contract with federal officials for such education. Such contracts may be in the form of tuition charges mutually agreed upon, the sharing of education operational costs and facilities, or any other type of contract which will be agreeable to the school district.

Where students are actually residents of and attend school in the North Dakota public school district, N.D.C.C. ?? 15-40.1-07 and 15-40.1-08 authorize payments from state foundation aid funds to the North Dakota public school district for its students educated in its own schools as well as for its students educated in a federal school pursuant to contract.

School boards have only the powers that are expressly granted by statute and those that are necessarily implied to carry out the specific grant of authority. Fargo Education Association v. Fargo Public School District No. 1, 291 N.W.2d 267 (N.D. 1980). In defining the powers of school boards, the rule of strict construction applies. Mvhre v. School Board of North Central Public School District No. 10, 122 N.W.2d 816 (N.D. 1963).

Words used in any statute are to be understood in their ordinary sense, unless a contrary intention plainly appears, but words

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explained in the Code are to be understood as thus explained. N.D.C.C. ? 1-02-02. It must be presumed that at the time of a legislative enactment the Legislature was cognizant of the common and ordinary meaning attached to the language it uses. The term "federal school" is not defined or explained in North Dakota law.

Generally, the law is what the Legislature says, not what is unsaid.

The Legislature must be presumed to have meant what it has plainly expressed. It must be presumed, also, that it made no mistake in expressing its purpose and intent. Where the language of a statute is plain and unambiguous, the court cannot indulge in speculation as to the probable or possible qualifications which might have been in the mind of the Legislature, but the statute must be given effect according to its plain and obvious meaning, and cannot be extended beyond it.

Little v. Tracy, 497 N.W.2d 700, 705 (N.D. 1993) (citing City of Dickinson v. Thress, 69 N.D. 748, 290 N.W. 653, 657 (1940)).

The term "federal" means pertaining to the national government of the United States. Black's Law Dictionary, 610 (6th ed. 1990). The term "school" means an institution or place for instruction or education. Black's Law Dictionary, 1334 (6th ed. 1990).

Considering the absence of a specific statutory definition of the terms in question and considering the ordinary meaning of those terms, it is my opinion that a federal school with which a North Dakota school board may contract for the education of its pupils is a school operated by the federal government. Some of the factual questions to consider in determining if a school is operated by the federal government include: who owns or leases the school site; who hires the school officials, teachers, and other employees; who pays the salaries; who decides the curriculum, school hours, personnel issues; who pays for maintenance of school building and grounds. Private entities, whether corporate or otherwise, and tribal governments or tribal organizations operating schools under their own control by contract with or under grants from the federal government or outside sources are not operating federal schools. School boards thus do not have authority to contract with those nonfederal entities for the education of students of the district under N.D.C.C. ? 15-40.2-11. See Letter from Assistant Attorney General Gerald W. Vandewalle to H. J. Snortland (Oct. 15, 1971).

N.D.C.C. ? 15-47-43 provides, in part:

Every public school district is a body corporate for school purposes and . . . shall possess all the powers and shall perform all the duties usual to corporations for public purposes or conferred upon it by law. Under

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its name it may sue and be sued, enter into contracts
. . . .

This section provides for the general organization of school districts as public corporations for school purposes, but does not provide authority for school boards to indulge in activities and functions not otherwise provided by law.

Neither N.D.C.C. ? 15-47-43 nor any other section of North Dakota law provides other or additional school board authority for contracts with private or nonfederal entities for the education of students of the district. No necessary implication is provided that the authority of N.D.C.C. ?? 15-29-08(3) or 15-40.2-11 can be expanded without specific legislative authority to allow contracts with nonfederal entities for the education of students of the district. If a school is not a federal school, a North Dakota public school district board may not contract with it for the education of students of the district except as authorized by N.D.C.C. ch. 15-59 for special education purposes under that chapter.

For Bureau of Indian Affairs' funding purposes, three types of schools are recognized as "Bureau funded schools." They are Bureau schools, contract schools, and schools assisted under the Tribally Controlled Schools Act of 1988 (25 U.S.C.A. ? 2501 et seq.) (known as grant schools). 25 U.S.C.A. ? 2019(3). Of these three types of schools, only Bureau schools appear to have the potential for being federal schools under North Dakota law. Indeed, the Act contains a number of references to the federal policy of giving tribes control over the education of their youth and removing the federal government from this responsibility. E.g., 25 U.S.C.A. ?? 2501, 2502. The Act states that when tribes receive education grants, the tribal recipients are to "operate" the schools, id. at ? 2503(a)(1), and refers to such schools as "tribally controlled." Id. at ?? 2503(a)(3), 2504(b). The Ninth Circuit Court of Appeals has stated: "The United States has . . . made a clear policy decision to diminish regulation of Indian tribal activities. See Indian Self-Determination and Education Assistance Act, 25 U.S.C. 450." Lesoeur v. United States, 21 F.3d 965, 968-69 (9th Cir. 1994).

If a school is a federal school, a North Dakota public school district board may contract with that school for the education of students of the district. Whether the Ojibwa Indian School is a federal school under the law as described in this opinion is a question of fact not appropriate for determination in an Attorney General's opinion.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

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