

LETTER OPINION
2001-L-29

August 10, 2001

Honorable Tony Grindberg
State Senator
2832 39½ Avenue SW
Fargo, ND 58104-7014

Dear Senator Grindberg:

Thank you for your letter asking about student fees chargeable by North Dakota public school district boards. You attached documents dealing with certain types of fees. From a conversation with a school district official, a member of my staff also learned that two of these fees are being questioned. Those fees are:

1. Machine repair and maintenance for equipment such as computers.
2. Locker fees for the use and maintenance of a student locker.

North Dakota's Constitution provides:

The legislative assembly shall provide for a uniform system of free public schools throughout the state, beginning with the primary and extending through all grades up to and including schools of higher education, except that the legislative assembly may authorize tuition, fees and service charges to assist in the financing of public schools of higher education.

N.D. Const. art. VIII, § 2.

Section 15.1-09-33(1), N.D.C.C., provides that a school district board may establish "a system of free public schools for all children of legal school age residing within the district."¹

¹ See also N.D.C.C. § 15.1-06-01(1) ("[e]ach public school must be free, open, and accessible at all times to any child . . .").

The North Dakota Supreme Court has interpreted “free public schools” as follows:

The term “free public schools” without any other modification must necessarily mean and include those items which are essential to education.

Cardiff v. Bismarck Public School Dist., 263 N.W.2d 105, 113 (N.D. 1978).

The Legislature has listed the fees North Dakota public school boards are authorized to charge as follows:

1. A school board may:
 - a. Require that a student pay a security deposit for the return of textbooks, materials, supplies, or equipment.
 - b. Assess a student a use charge if a textbook or other item covered under subsection 1 has received undue wear.
 - c. Require that a student furnish personal or consumable items.
 - d. Require that a student pay an admission fee or other charges for extracurricular or noncurricular activities if the student's attendance is optional.
 - e. Require that a student pay a fee or a premium for any authorized student health and accident benefit plan.
 - f. Require that a student pay a fee for personal athletic equipment and apparel; provided the board shall allow a student to use the student's own equipment and apparel if it meets reasonable health and safety standards established by the board.
 - g. Require that a student pay a fee in any program which generates a product that becomes the personal property of the student.
 - h. Require that a student pay a fee for behind-the-wheel driver's education instruction.

- i. Require that a student pay a fee for goods, including textbooks, and services provided in connection with any postsecondary level program or any program established outside regular elementary, middle school, or secondary school programs, including vocational and technical programs, and adult or continuing education programs.
- j. Require that a student pay any other fees and charges permitted by statute.²

N.D.C.C. § 15.1-09-36(1).

The “primary objective in interpreting a statute is to ascertain the intent of the legislature by looking at the language of the statute itself and giving it its plain, ordinary, and commonly understood meaning.” Buchholz v. City of Oriska, 611 N.W.2d 886, 887 (N.D. 2000). In conducting that interpretation:

It must be presumed that the Legislature intended all that it said, and that it said all that it intended to say. The Legislature must be presumed to have meant what it has plainly expressed.

City of Dickinson v. Thress, 290 N.W. 653, 657 (N.D. 1940).

The fees you question are across-the-board fees charged to all students and are not subject to the students’ choice in using the equipment or locker. Rather, the fees you question are charged because the students attend school. What is deemed “essential to education” might change from time to time but attending public school in North Dakota is and must be free. No price may be attached to mere attendance. The list of authorized fees in N.D.C.C. § 15.1-09-36(1) is exclusive and no general words of expansion, or other statutory authority, allow other fees. No authority for the fees you question exists because they do not fall within any of the categories provided in N.D.C.C. § 15.1-09-36(1).

Subdivision a of subsection 1 of section 15.1-09-36 allows a school board to require a student to pay a security deposit for the return of books, materials, supplies, or equipment. This subdivision would require a security deposit to be returned to the student at the end of the student’s use of those supplies or equipment unless they were returned with undue wear as provided in subdivision b of subsection 1 of section 15.1-09-36. These two

² There are no other statutes that authorize public schools to require students to pay other fees or charges.

subdivisions would authorize a school board to retain part of a security deposit for books, materials, supplies, or equipment only on an individual basis if that student was responsible for the undue wear of equipment entrusted to the student. The subdivisions do not authorize a standard, nonrefundable fee for the purchase and maintenance of equipment or lockers the school district must necessarily provide as part of the educational process.

None of the other subdivisions in N.D.C.C. § 15.1-09-36(1) have any relationship to the fees that you question. It is therefore my opinion that the two fees that you question as noted above are not authorized to be charged by North Dakota public school districts.

Section 15.1-09-36(5), N.D.C.C., makes the Superintendent of Public Instruction the regulator of fees charged by school boards in this state. If the Superintendent of Public Instruction determines any fee charged by a school board to be unauthorized and orders its cessation, then failure by the school board to comply with the Superintendent's order results in a loss of per-student and transportation aid payments to that district for each student charged the unauthorized fee. Thus, questions and concerns by school district patrons and school district officials concerning the authority for imposing student fees should be directed to the Superintendent of Public Instruction.

Sincerely,

Wayne Stenehjem
Attorney General

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