LETTER OPINION
2000-L-13

February 1, 2000

Honorable Aaron Krauter
State Senator
HC1, Box 27
Regent, ND 58650-9721

Dear Senator Krauter:

Thank you for your letter asking whether a school district may give or sell real property to a nonprofit corporation at less than its fair market value. Your letter indicates that a school district anticipating dissolution is considering options available in disposing of its real property. One suggested option is giving or selling the land and building to a newly formed community nonprofit corporation which desires to maintain the building for use as a community center.

The board of a school district may discontinue schools and liquidate the assets of the district as required by law, and purchase, sell, exchange, and improve real property. N.D.C.C. § 15.1-09-33(5) and (6).

School board authority is strictly construed in both its existence and extent. Myhre v. School Board of North Central Public School District No. 10, 122 N.W.2d 816 (N.D. 1963); 1993 N.D. Op. Att'y Gen. L-230. School boards have only the powers expressly granted by statute and the powers necessarily implied therefrom with which 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); 1994 N.D. Op. Att'y Gen. L-287; 1995 N.D. Op. Att'y Gen. L-71. Review of the Century Code does not disclose express authority nor necessarily implied authority for a school board to make sales to nonprofit corporations below fair market value. N.D.C.C. § 15.1-12-19 provides that the board of a reorganized school district may sell a school building to a political subdivision at less than its fair market value if the sale is approved by a unanimous vote of the school board.

In addition to the fact that no statute expressly nor impliedly authorizes a school district to sell property at less than fair market value to a nonprofit corporation, a school district must be concerned with compliance with the North Dakota Constitution concerning making loans, giving credit, or making donations. The North Dakota Constitution provides:

> The state, any county or city may make internal improvements and may engage in any industry, enterprise or business, not prohibited by article XX of the constitution, but neither the state nor any political subdivision thereof shall otherwise

> loan or give its credit or make donations to or in aid of any individual, association or corporation except for reasonable support of the poor, nor subscribe to or become the owner of capital stock in any association or corporation.

N.D. Const. art. X, § 18.

School districts are not listed in the first part of Article X, Section 18 of the North Dakota Constitution, so their ability to engage in "any industry, enterprise or business" is not provided by that section. However, a school district is a political subdivision and, pursuant to the last part of Article X, Section 18, a school district may not make donations to any individual, association, or corporation except for reasonable support of the poor.[1]

The North Dakota Supreme Court has held that a transaction involving the sale of state-owned property for less than what could be obtained for the property at a public sale violates Article X, Section 18 of the North Dakota Constitution. See Herr v. Rudolf, 25 N.W.2d 916 (N.D. 1947). The same would be true concerning a sale for less than fair market value by a school district.

Based on the above, it is my opinion that a school district may not give or sell property at less than the fair market value to a nonprofit corporation. It is my further opinion that, when exercising its authority under N.D.C.C. § 15.1-09-33(5) and (6), a school district must sell real property at fair market value, except as provided in N.D.C.C. § 15.1-12-19.

Sincerely,

Heidi Heitkamp
Attorney General

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[1] A state law authorizing such support is also necessary. See N.D. Const. art. VII, § 2; Letter from Attorney General Nicholas Spaeth to Charles Isakson (Sept. 29, 1992).