

LETTER OPINION
2000-L-23

February 29, 2000

Honorable Wayne G. Sanstead
Superintendent of Public Instruction
600 East Boulevard Avenue, Dept. 201
Bismarck, ND 58505

Dear Dr. Sanstead:

Thank you for your memorandum asking whether N.D.C.C. § 15-40.1-04.1(2) authorizes your department to make supplemental foundation aid payments to a school district where a change in law results in a reduction in the taxable value of school district property from one year to the next.

N.D.C.C. § 15-40.1-04.1(2) provides, in part:

Whenever the foundation aid payment to any school district is based upon a determination of property valuation which is later diminished by legislative or judicial action, the school district has one year from the date of final determination or adjudication of the adjustment of the property tax base to make application to the superintendent of public instruction for a supplemental foundation aid payment in the amount necessary so the district will have received the amount it would have received had the correct property tax base been used.

Construing the clear language of the statute in its ordinary sense, the import of the above-quoted language is that when the Department of Public Instruction makes a foundation aid payment based on property values for a certain year and those same property values used by the department are later reduced, a supplemental payment is due. See N.D.C.C. §§ 1-02-02, 1-02-05.

After property tax assessments are made for a particular year and equalized as provided in N.D.C.C. chs. 57-02, 57-09, 57-11, 57-12, and 57-13, school districts are required to file taxable value certifications with the Superintendent of Public Instruction by December 15 of the school year. N.D.C.C. § 15-40.1-06(5). The taxable value certifications are used by the Superintendent to arrive at foundation aid payments under N.D.C.C. § 15-40.1-06(3) where those taxable valuation amounts are used to apply the mill deduction. However, that mill deduction is made using the "latest available net assessed and equalized valuation of property of the school district." N.D.C.C. § 15-40.1-06(3) (a).

Honorable Wayne G. Sanstead
February 29, 2000
Page 2

The Superintendent is required to make the above-noted calculation on or before November 1 during the school year for which foundation aid payments are made. Because the calculation must be made in November of the school year in question, the latest available net assessed and equalized valuation of property of the school district is for the preceding year. N.D.C.C. § 15-40.1-05. For example, the calculation of foundation aid payments for the 1999-2000 school year are determined by the Superintendent by November 1, 1999, based on the taxable value certificates filed with him in 1998 for taxes payable in 1999.

N.D.C.C. § 15-40.1-04.1(2) applies when the actual taxable valuation for the school district (net assessed and equalized valuation of property of the school district) employed by the Superintendent of Public Instruction to calculate foundation aid payments for any school year is itself changed. For example, the 1998 taxable value certificate could become inaccurate based on changes in valuation due to abatement proceedings. In such a case, the actual taxable valuation used by the Superintendent to calculate foundation aid payments for the school year 1999-2000 would have been diminished. The procedure then would be for an amended taxable value certificate for 1998 to be filed to support a request for supplemental foundation aid for the 1999-2000 school year.

Variances in the value of school district property from year to year do not alter the taxable values used by the Superintendent of Public Instruction to calculate foundation aid for a particular year. Consequently, it is my opinion that such variances do not qualify a school district for supplemental foundation aid payments under N.D.C.C. § 15-40.1-04.1(2).

Sincerely,

Heidi Heitkamp
Attorney General

rel/pg