LETTER OPINION
2001-L-18

June 7, 2001

Honorable Larry J. Robinson
State Senator
3584 Sheyenne Circle
Valley City, ND 58072-9545

Dear Senator Robinson:

Thank you for your letter asking whether a school district educating only elementary grade students because of its cooperative agreement with another school district continues to be eligible to participate in an area vocational and technical center under N.D.C.C. ch. 15-20.2.

You present circumstances where a former K-12 school district entered into a cooperative agreement with another school district whereby the districts divided the grades each would educate. Both districts were members of an area vocational and technical center prior to their cooperative agreement, and both continue to be members, even though one of the districts educates only elementary grades pursuant to the agreement.

North Dakota Century Code §15-20.2-01(3) defines participating district as "a public school district whose students are attending an area vocational and technical center." This section does not discuss the grades being educated. However, N.D.C.C. § 15-20.2-08 states, in part:

> A center board shall, . . . assess each participating school district its proportionate share based upon its high school enrollment as compared to the total high school enrollment of all participating school districts in the area vocational and technical center . . . .

North Dakota Century Code § 15-20.2-08 makes it mandatory that the area vocational and technical center board assess each participating district and do so on the basis of its high school enrollment.

Statutes are said to be *in pari materia* when they relate to the same subject matter. Statutes *in pari materia* may be construed together so that inconsistencies in one statute may be resolved by looking at another statute on the same subject. Black's Law Dictionary, p. 794 (7th ed. 1999). All statutes *in pari materia* are to be considered and given meaningful effect without rendering one or the other useless. Litten v. City of Fargo,

294 N.W.2d 628, 633 (N.D. 1980); Edgeley Educ. Ass'n v. Edgeley Public School Dist. No. 3, 231 N.W.2d 826 (N.D. 1975).

Considering both N.D.C.C. §§ 15-20.2-01(3) and 15-20.2-08 together, and giving meaningful effect to both, it is my opinion that participating districts in an area vocational and technical center must pay assessments calculated on the basis of their high school enrollment and that only districts with a high school enrollment may be participating districts under the chapter.

The related question presented in your letter is whether a school district participating in a cooperative education agreement approved by the Superintendent of Public Instruction, which results in that district educating only elementary grades, has a high school enrollment when the cooperative agreement requires it to educate only elementary grades.

The effect of a cooperative education agreement was discussed in a prior opinion of this office in the context of open enrollment. In that opinion, the Attorney General said:

> The districts cooperating with each other do not lose their character as independent school district entities. To hold otherwise would give cooperating districts a status similar to reorganized districts without their undertaking the required statutory procedures. Consequently, a school district cooperating with another school district pursuant to such an agreement does not become one district with its cooperative partner. Nothing in N.D.C.C. §§ 15-29-02(4) and 15-40.1-07.4 indicates a legislative intent to authorize departure from statutes regulating open enrollment and tuition payments merely because school districts cooperate in an approved plan. If cooperating districts were intended to be treated as one district for any purpose, the Legislature would have so stated. . . .
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> Thus, if a district does not provide a grade level within its district, and a resident student in that grade level attends school outside the district, then the school district of residence must pay tuition to the admitting district. This is so whether the student attends school in a district that is part of the same cooperative plan or one that is not.
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> It is my opinion that school districts cooperating with other school districts pursuant to a plan approved by the Superintendent of Public Instruction must qualify pursuant to open enrollment under N.D.C.C. ch. 15-40.3 and tuition payments under N.D.C.C. ch. 15-40.2 as independent school districts based upon the grade levels actually being taught within each school district.

1997 N.D. Op. Att'y Gen. L-10, L-11 to L-12.[1]

The logic from the 1997 opinion applies to the questions you ask. The cooperative agreement in question results in one of the two districts educating only elementary grades. Thus, based on the grades it actually teaches, it does not have a high school enrollment and, in my opinion, is not eligible to be a participating district in an area vocational and technical center. A district finding itself in that position should proceed expeditiously to withdraw from the area vocational technical center under N.D.C.C. § 15-20.2-14.

Sincerely,

Wayne Stenehjem
Attorney General

rel/pg
cc: Wayne Kutzer, State Board for Vocational Education

[1] 1997 N.D. Sess. Laws ch. 175, § 5, amended N.D.C.C. § 15-40.3-01 to address the open enrollment issue. That amendment does not alter the legal logic of the opinion.