

**LETTER OPINION
2006-L-05**

February 1, 2006

The Honorable April Fairfield
State Senator
312 South Main
Eldridge, ND 58401-7427

Dear Senator Fairfield:

Thank you for your letter asking whether the passage of 2005 House Bill 1228 altered the requirement in N.D.C.C. § 15.1-09-31¹ for a school board to publish an itemized list of obligations approved for payment, if so determined by the voters. For the reasons described below, it is my opinion that 2005 House Bill 1228 did not alter the requirement contained in N.D.C.C. § 15.1-09-31 for a school board to publish an itemized list of obligations approved for payment, if so determined by the voters.

ANALYSIS

House Bill 1228, passed by the 59th Legislative Assembly in 2005, extensively amended N.D.C.C. § 15.1-07-12.² Section 15.1-07-12(1), N.D.C.C., now permits a school board to adopt certain policies governing the disbursement of school district moneys by the business manager through a variety of means. Subsection 2 permits disbursement of school district moneys by the business manager, in the absence of any policies adopted under subsection 1, upon presentation of a bill or invoice if payment has been authorized by the president of the school board and sufficient moneys are available for disbursement.³

You ask whether the passage of House Bill 1228 altered the provision contained in N.D.C.C. § 15.1-09-31 for a school district to publish an itemized list of obligations approved for payment, if so required by a biennial vote of a majority of electors. There is no language in House Bill 1228 indicating a legislative intent to amend or alter N.D.C.C.

¹ Section 15.1-09-31, N.D.C.C., requires a biennial election on the question of publishing school board proceedings and provides, in part, that “[i]f a majority of the electors voting on the question approve the publication, the school district business manager shall provide for publication of the school board proceedings, including an itemized list of obligations approved for payment.”

² See 2005 N.D. Sess. Laws ch. 154.

³ N.D.C.C. § 15.1-07-12(2).

§ 15.1-09-31.⁴ Nor was N.D.C.C. § 15.1-09-31 otherwise amended by the 2005 Legislative Assembly.

Although House Bill 1228 contains no express amendment or repeal of the publication requirement found in N.D.C.C. § 15.1-09-31, it is sometimes determined that a statute is impliedly repealed or amended by the passage of another statute. As I stated in N.D.A.G. 2004-L-29:

An “implied amendment” is an act that makes a material modification to a statute without specifically amending the statute in question. Tharaldson v. Unsatisfied Judgment Fund, 225 N.W.2d 39, 45 (N.D. 1974). There is a presumption against implied amendments. In order to overcome that presumption, there must be an irreconcilable conflict between the implied amendment and the applicable statute. Id.

As noted in N.D.A.G. 81-90:

The North Dakota Supreme Court has held on numerous occasions that implied repeals are not favored and are to be avoided when possible. . . . In order for two statutes to be so irreconcilable as to result in the implied repeal of the first enacted, there must be a clear repugnancy between the two to such an extent that a necessary implication arises that the Legislature, by enactment of the later, intended to repeal the former.

“Although an implied repeal or implied amendment of a statute is disfavored, that conclusion may be found where a conflict between the two statutes is irreconcilable. Birst v. Sanstead, 493 N.W.2d 690, 695 (N.D. 1992).”⁵

I do not believe N.D.C.C. § 15.1-07-12, as amended by House Bill 1228, and the publication requirement contained in N.D.C.C. § 15.1-09-31 are irreconcilable. As amended, N.D.C.C. § 15.1-07-12 merely provides that a school district may establish policies for disbursing school district money by the business manager and, in the absence of those policies, permits the business manager to pay a bill if authorized by the president of the school board and if sufficient moneys are available. There is nothing in N.D.C.C. § 15.1-07-12 which would directly or indirectly alter or affect the publication requirement contained in N.D.C.C. § 15.1-09-31. These statutes are not clearly repugnant; both may be given effect without doing violence to either.

⁴ See 2005 N.D. Sess. Laws ch. 154.

⁵ N.D.A.G. 96-F-08.

As noted in the legislative history, House Bill 1228 was “designed to make life easier for all school districts. It allows for business officers to make payments without each check being signed by the school board president. Quick action on the part of the business officer often results in a discounts [sic] on accounts.”⁶ Another proponent of House Bill 1228 provided written testimony that the bill would

allow each school district, subject to school board approval, the ability to develop a process governing the distribution of moneys by the business manager. That process would include the internal controls necessary to protect the funds of the district. Bills would still be presented to the school board for review, but the review may occur after the funds have been distributed.⁷

Thus, nothing in the language of House Bill 1228 or the legislative history indicates a legislative intent to alter the requirement contained in N.D.C.C. § 15.1-09-31 for publication of school board proceedings, including an itemized list of obligations approved for payment. Consequently, it is my opinion that 2005 House Bill 1228 did not alter the requirement contained in N.D.C.C. § 15.1-09-31 for a school board to publish an itemized list of obligations approved for payment, if so determined by the voters.

You also ask whether the publication requirement contained in N.D.C.C. § 15.1-09-31 may be satisfied by publishing a one-time listing of annual salaries in lieu of an itemization of monthly payments to each employee. This question was addressed in an opinion issued by this office in 1967.⁸ I have enclosed a copy of that opinion for your information. As you will note, the opinion concludes that

We do not, however, believe that the teacher’s salary must be published each time a check is issued. The school district and the teacher enter into a contract by which the school district agrees to pay the teacher the sum stipulated therein. This becomes a binding obligation upon the school district. Therefore, it is our opinion that if the school district publishes the yearly salary of the teacher at the time contract is signed or at the time the teacher begins his duties, this is sufficient and the monthly salary need not be published each time a check is issued.

⁶ Hearing on H.B. 1228 Before the House Education Comm., 2005 N.D. Leg. (Jan. 17) (Statement of Rep. Delmore).

⁷ Hearing on H.B. 1228 Before the House Education Comm., 2005 N.D. Leg. (Jan. 17) (Statement of Dan Huffman).

⁸ See N.D.A.G. 67-196.

LETTER OPINION 2006-L-05
February 1, 2006
Page 4

The 1967 opinion does go on to note that “[i]f the salary of any given teacher is altered from that published previously, such fact should be noted in the proceedings of the school board.”⁹

The 1967 opinion has not been overruled and remains the opinion of this office.

Sincerely,

Wayne Stenehjem
Attorney General

jjf/pg
Enclosure

This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.¹⁰

⁹ Id.

¹⁰ See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).