

**LETTER OPINION
2006-L-35**

October 30, 2006

Dr. Wayne Sanstead
Superintendent of Public Instruction
State Capitol
Bismarck, ND 58505

Dear Dr. Sanstead:

Thank you for your letter asking whether the Earl Public School District is required by law to be dissolved. It is my opinion that the Earl Public School District is required by law to be dissolved.

ANALYSIS

Your letter states:

The Earl and Horse Creek Public School Districts are small school districts on the western border of North Dakota. The Bowline Butte Public School District was dissolved and attached to the McKenzie County Public School District, effective May 1, 2006, but before its dissolution, it bordered the Earl School District to the east. . . .

In recent years, the Earl and Bowline Butte School Districts had each been operating an elementary school and had been sending their high school students to attend school in other school districts. During the 2004-05 school year, however, the Earl and Bowline Butte School Districts did not operate schools in their districts and, instead, had all of their elementary students attend school in the Horse Creek School District. This was apparently done pursuant to a joint powers agreement

. . . .

. . . On May 16, 2005, the Department of Public Instruction (DPI) sent a letter to both the Earl and Bowline Butte School Districts advising them that N.D.C.C. § 15.1-12-24 requires that their districts reorganize or dissolve since they did not operate schools during the 2004-05 school year and that entering into a joint powers agreement did not change this requirement that they reorganize or dissolve. . . .

The Bowline Butte School District, thereafter, made efforts to dissolve. . . . [T]he dissolution became effective on May 1, 2006. . . .

Instead of attempting to reorganize or dissolve, the Earl School District decided to reopen its school and have its elementary students come back to the school in the Earl School District rather than continue attending school in the Horse Creek School District. The Earl School District operated an elementary school during the 2005-06 school year.

As required by N.D.C.C. §§ 15.1-12-26(1)(b) and 15.1-12-27, the county superintendent of schools provided notice of a hearing of the McKenzie County Committee regarding the dissolution of the Earl School District. The hearing was held on May 22, 2006. At the hearing, Earl School District Board member, Steve Paul, provided oral and written testimony as to why the Earl School District should not be dissolved. . . . The McKenzie County State's Attorney, who has the duty to advise the McKenzie County Committee, was not present at the hearing. . . . After the hearing, the county committee decided to allow the Earl School District to continue to operate. The Earl School District is apparently operating an elementary school again in the 2006-07 school year.¹

State law provides:

Nonoperating school district - Reorganization or dissolution. A school district that ceases to provide educational services within the district must become, within one year, through a process of reorganization or dissolution, part of a district operating an approved school. If a school district affected by this section has not become part of a district operating an approved school within the prescribed time limit, the school district must be dissolved. . . .²

The Earl School District has argued that even though it did not operate a school within its district in the 2004-05 school year, it did provide "educational services" as required by N.D.C.C. § 15.1-12-24. It "hired a teacher, hired a business manager, contracted with Wilmac [Special Education Unit] for special services, contracted with Sidney Public Schools for the education of high school students, paid transportation to high school families and furnished transportation for elementary students, and provided facilities for

¹ Letter from Dr. Wayne Sanstead to Attorney General Wayne Stenehjem (Sept. 12, 2006).

² N.D.C.C. § 15.1-12-24 (emphasis added).

concerts, programs and recreational activities to the Joint Power District.”³ “Educational services” is not defined in title 15.1 regarding elementary and secondary education. However, another state law provides:

A county committee shall initiate proceedings to dissolve a school district and attach the property to other operating high school districts when it is notified in writing by the county superintendent of schools . . . that:

....

- b. The district has not operated a school as required by section 15.1-12-24; . . .⁴

Reading N.D.C.C. §§ 15.1-12-24 and 15.1-12-26(1) together, it is clear that the Legislature intended providing “educational services” in N.D.C.C. § 15.1-12-24 to mean operating a school as indicated in N.D.C.C. § 15.1-12-26(1). Thus, it is my opinion that to “provide educational services within the district” under N.D.C.C. § 15.1-12-24 means to operate a school in the district.

The Earl School District has argued that, because of the joint powers agreement, the Earl, Bowline Butte, and Horse Creek School Districts, in effect, “became one district and regardless where the students were housed on any given day, that facility became a part of each and every school district involved.”⁵ There are various provisions in state law indicating when school districts are to be considered a single district. “For purposes of determining whether educational services are provided to an entire grade level, districts cooperating with each other in the joint provision of educational services under a plan approved by the superintendent of public instruction are considered to be a single district.”⁶ Also, a school district may admit a nonresident student from another district without requiring payment of tuition if that other school district is offering the same grade level as that in which the student is enrolled. “For purposes of determining whether the same grade level is offered, two or more school districts cooperating with each other for the joint provision of educational services under a plan approved by the superintendent of public instruction must be considered to be a single district.”⁷ “A student whose school district of residence does not offer the grade level in which the student requires enrollment may not participate in open enrollment. For purposes of determining whether the grade

³ Written testimony of Steve Paul submitted at the May 22, 2006, McKenzie County Committee hearing.

⁴ N.D.C.C. § 15.1-12-26(1) (emphasis added).

⁵ Written testimony of Steve Paul submitted at the May 22, 2006, McKenzie County Committee hearing.

⁶ N.D.C.C. § 15.1-29-03(2) (emphasis added).

⁷ N.D.C.C. § 15.1-29-13(2)(b) (emphasis added).

level in which the student requires enrollment is offered, the several school districts cooperating with each other for the joint provision of education services under a plan approved by the superintendent of public instruction must be considered to be a single district.⁸ In contrast to the laws just cited, there is no law stating that, for purposes of determining whether a district is operating a school, school districts cooperating with each other under a joint powers agreement under N.D.C.C. ch. 54-40.3 must be considered to be a single district.

Also, a joint powers agreement made pursuant to N.D.C.C. ch. 54-40.3 “does not relieve any political subdivision . . . of any obligation or responsibility imposed by law”⁹ Thus, the joint powers agreement does not relieve the Earl School District of the obligation under N.D.C.C. § 15.1-12-24 to dissolve after it has ceased to operate a school for a one year period. Also, an Attorney General’s opinion has concluded that joint powers agreements “are not substitutes for annexation, reorganization, or dissolution of school districts”¹⁰

In conclusion, it is my opinion that the Earl School District did not provide educational services within its district for the 2004-05 school year and is, therefore, required by N.D.C.C. § 15.1-12-24 to be dissolved. It is my further opinion that the McKenzie County Committee is required by N.D.C.C. § 15.1-12-26(1) to dissolve the Earl School District. The fact that the Earl School District operated an elementary school again during the 2005-06 school year and is currently operating a school during the 2006-07 school year does not change the requirement that the Earl School District must be dissolved. The law is clear in requiring that since the Earl School District did not operate a school during the 2004-05 school year, it must be dissolved. Disregarding the law and reopening the school does not defeat this requirement.

Sincerely,

Wayne Stenehjem
Attorney General

las/vkk

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.¹¹

⁸ N.D.C.C. § 15.1-31-01(6) (emphasis added).

⁹ N.D.C.C. § 54-40.3-01(3).

¹⁰ N.D.A.G. 94-F-08.

¹¹ See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).