

**LETTER OPINION
2020-L-07**

September 23, 2020

The Honorable Dennis Johnson
House of Representatives District 15
7871 45th St NE
Devils Lake, ND 58301-9089

Dear Representative Johnson:

Thank you for your letter asking about distribution of school district property and funds as a part of a dissolution¹ or reorganization.² For the reasons below, it is my opinion that a political subdivision may enter into a Joint Powers Agreement (JPA) to exercise powers that belong to one of the political subdivisions; a school board may not sell a building to a political subdivision for less than its fair market value as a part of a dissolution; and moneys in a school's building fund may only be utilized or transferred as allowed by N.D.C.C. § 57-15-17.

ANALYSIS

Validity of the proposed Joint Powers Agreement

In your opinion request, you explain:

The Edmore Public School District is considering options in the event of dissolution or reorganization. Upon dissolution/reorganization or just prior to, the School District and the City are contemplating entering into a Joint Powers Agreement (JPA), whereby the School District gives the school building and property to the City to use as a community building.³

¹ "Dissolution" means the process through which a school district ceases to function and the subsequent attachment of its real property to other school districts. N.D.C.C. § 15.1-12-01(3).

² "Reorganization" means the formation of a new school district through the combination, in whole or in part, of two or more school districts. N.D.C.C. § 15.1-12-01(4).

³ Letter from Dennis Johnson, Rep., Dist. 51, to Wayne Stenehjem, N.D. Att'y Gen. (Feb. 25, 2020).

It is well-established that a donation by one political subdivision to another is not prohibited by N.D. Const. Art. X, § 18, but the political subdivision must also have statutory authority to donate the moneys or real property to another political subdivision.⁴

Section 54-40.3-01, N.D.C.C., states:

Any county, city, township, city park district, school district, or other political subdivision of this state, upon approval of its respective governing body, may enter into an agreement with any other political subdivision of this state for the cooperative or joint administration of any power or function that is authorized by law or assigned to one or more of them.⁵

Therefore, in order for a school board to sell or donate real property to a city for less than fair market value under a JPA, either the city or the school board must have the statutory authority to donate or sell the real property for less than fair market value.

The existence and extent of the authority of a school board are strictly construed.⁶ 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.⁷ The board of a school district has statutory authority to discontinue schools and liquidate the assets of the district as required by law, and to purchase, sell, exchange, and improve real property.⁸ “[A] school district may not give or sell property at less than the fair market value⁹ [W]hen 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.”¹⁰ As a part of a reorganization, a school district may sell real property at less than fair market value to another political subdivision if the requirements of N.D.C.C. § 15.1-12-19 are met.

⁴ See N.D. Const. art. X, § 18; N.D.A.G. 99-F-14; Letter from Nicholas Spaeth, Att’y Gen., to Eugene Belisle, Mayor, Riverdale (Apr. 7, 1992); N.D.A.G. 83-17.

⁵ N.D.C.C. § 54-40.3-01(1).

⁶ *Myhre v. Sch. Bd. of N. Cent. Pub. Sch. Dist. No. 10*, 122 N.W.2d 816 (N.D. 1963); N.D.A.G. 2000-L-13; N.D.A.G. 93-L-230.

⁷ *Fargo Educ. Ass’n v. Fargo Pub. Sch. Dist. No. 1*, 291 N.W.2d 267 (N.D. 1980); N.D.A.G. 2000-L-13; N.D.A.G. 95-L-71; N.D.A.G. 94-L-287.

⁸ N.D.C.C. § 15.1-09-33(5), (6).

⁹ Fair market value is a question of fact and cannot be determined by this opinion. Certain factors, such as lack of market in rural areas or large expenses in maintaining the building could be considered and affect the fair market value.

¹⁰ N.D.A.G. 2010-L-03; N.D.A.G. 2000-L-13 (citing *Herr v. Rudolf*, 25 N.W.2d 916 (N.D. 1947)).

No statutory authorization exists for a school board to sell real property at less than fair market value as a part of dissolution, however. The language of N.D.C.C. § 54-40.3-01 only requires that one of the parties to the JPA have the statutory authority to take the action that is the subject of the JPA.¹¹ Although cities have authority to sell, lease, or dispose of land pursuant to statute, there is no statutory authority for a city to donate or deviate from the procedures regarding sale of real property.¹²

A city may deviate from the limitations and procedures regarding sale of real property set forth in Century Code if the city becomes a home rule city pursuant to N.D.C.C. ch. 40-05.1 and adopts the power to “acquire, hold, operate, and dispose of property within or without the corporate limits.”¹³ A city may also control its finances and fiscal affairs, and make certain donations, if these powers are listed in the home rule charter and appropriately implemented through ordinances.¹⁴ I am not aware of whether Edmore is a home rule city.

Therefore, if neither political subdivision party to a JPA has statutory or home rule authority to donate or sell real property at less than fair market value, it is my opinion that a school board may not sell or donate property at less than fair market value to a city as a part of a dissolution of a school district through a JPA, but a school board does have statutory authority to sell or donate property at less than fair market value as a part of a reorganization.

Building Funds

You also ask whether a school district may transfer money out of its building fund to a city to use towards future utilities and maintenance costs associated with a building.

Use and disposition of a school district building fund is governed by N.D.C.C. § 57-15-17. Section 57-15-17(1)(b), N.D.C.C., states:

¹¹ N.D.C.C. § 54-40.3-01(1); N.D.A.G. 2005-L-35; N.D.A.G. 2002-F-03; N.D.A.G. 98-L-192; N.D.A.G. 95-L-115; N.D.A.G. 94-F-02; N.D.A.G. 94-L-258; N.D.A.G. 93-L-190; N.D.A.G. 93-F-23.

¹² See N.D.C.C. § 40-11-04 (“When the property to be disposed of is estimated by the governing body of the municipality to be of a value of less than two thousand five hundred dollars, the property may be sold at private sale upon the proper resolution of the governing body. In all other cases, the property may be sold only at public sale or as provided under section 40-11-04.2.”); see also N.D.C.C. §§ 40-11-04.1, 40-11-04.2, 40-57-03(12), 40-58-13(2), 40-61-05(5).

¹³ N.D.C.C. § 40-05.1-06(1). The city would also have to adopt an implementing ordinance in order to exercise this power.

¹⁴ N.D.C.C. § 40-05.1-06(2), (16).

- b. Moneys in the building fund *may only be used for*:
- (1) The construction of school district buildings and facilities;
 - (2) The renovation, repair, or expansion of school district buildings and facilities;
 - (3) The improvement of school district buildings, facilities, and real property;
 - (4) The leasing of buildings and facilities;
 - (5) The payment of rentals upon contracts with the state board of public school education;
 - (6) The payment of rentals upon contracts with municipalities for career and technical education facilities financed pursuant to chapter 40-57; and
 - (7) The payment of principal, premiums, and interest on bonds issued in accordance with subsection 7 of section 21-03-07.¹⁵

The language of this statute clearly indicates that the only uses for the building fund are those specifically listed in N.D.C.C. § 57-15-17(1)(b). Utilities and maintenance costs for the building after it is transferred to the city, as proposed, are not listed within the uses permitted under N.D.C.C. § 57-15-17(1)(b). While “renovation, repair, or expansion” and “improvement” are listed as permitted uses, these are noted specifically for “school district buildings, facilities, and real property.”¹⁶ If a school board were to transfer the building to a city, the building would no longer be a “school district building” and the use of funds for renovation, repair, improvement, or expansion would no longer be authorized by statute. Where the wording of a statute is “clear and free of all ambiguity,” the letter of the law is not to be disregarded.¹⁷ The list provided in N.D.C.C. § 57-15-17(1)(b) is an exclusive list of the permissible uses for building funds. For these reasons, it is my opinion that a school building fund may only be utilized for the future utilities and maintenance of a building that is transferred to a city if the proposed uses fall within the allowable uses delineated in N.D.C.C. § 57-15-17(1)(b).

A school board may, in some factual scenarios contemplated by statute, pay building fund moneys into a school’s general fund,¹⁸ which may be used for any legitimate purpose related to educational services.¹⁹ Whether a school board’s building fund meets those statutory requirements is a question of fact which cannot be determined in a legal opinion of the

¹⁵ N.D.C.C. § 57-15-17(1)(b) (emphasis added).

¹⁶ See N.D.C.C. § 57-15-17(1)(b)(2), (3).

¹⁷ N.D.C.C. § 1-02-05.

¹⁸ N.D.C.C. § 57-15-17(2), (3), (4).

¹⁹ N.D.C.C. § 57-15-14.2(1); *Peterson v. McKenzie Cnty. Pub. Sch. Dist. No. 1*, 467 N.W.2d 456 (N.D.1991).

Attorney General. Accordingly, to the extent that this presents a question of fact, I must decline to express an opinion as to whether the building fund in the scenario you present meets the statutory requirements to be properly transferred to the school's general fund.

CONCLUSION

Therefore, it is my opinion that a school board may sell real property at less than fair market value as a part of a reorganization pursuant to N.D.C.C. § 15.1-12-19, but in the case of a dissolution, a school board lacks statutory authority to sell real property at less than fair market value, or donate property, and that school building funds may only be utilized for the purposes outlined in N.D.C.C. § 57-15-17(1)(b).

Sincerely,

Wayne Stenehjem
Attorney General

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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.²⁰

²⁰ See *State ex rel. Johnson v. Baker*, 21 N.W.2d 355 (N.D. 1946).