

**LETTER OPINION**  
**96-L-42**

March 26, 1996

Honorable Wayne G. Sanstead  
Superintendent of Public Instruction  
600 East Boulevard Avenue  
Bismarck, ND 58505-0440

Dear Dr. Sanstead:

Thank you for your memorandum asking whether educational programs distributed by telecommunication systems constitute a "school" requiring State Board of Public School Education approval if some of the systems' broadcast facilities are located within a school district that is not participating in the educational telecommunication system.

Your memorandum states that a certain group of North Dakota school districts, organized into a telecommunications consortium pursuant to a joint powers agreement, intends to lease from a television station a broadcast studio from which educational programs could be broadcast, and that this broadcast studio would be located within the geographical boundaries of a school district that is not a participant in the above-noted consortium. You question whether this broadcast studio constitutes a school under North Dakota law, if used exclusively to broadcast a teacher's presentation or if also used for the physical attendance of students of any age.

North Dakota statutes, enacted in 1957, allow school districts to locate schools in other school districts under certain circumstances. 1957 N.D. Sess. Laws ch. 130. Two of those statutes initially enacted in 1957 currently provide:

The powers and duties of the school board of a public school district shall be as follows:

. . . . .

2. To organize, establish, operate, and maintain such elementary and high schools as it may deem requisite and expedient, to acquire sites and construct buildings and other facilities in connection therewith, and to change the location of or discontinue such schools and liquidate the assets thereof in the manner prescribed by law; provided,

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that no site shall be acquired or building constructed, or no school shall be organized, established, operated, maintained, discontinued, or changed in location without the approval of the state board of public school education if outside the boundary of the district.

N.D.C.C. § 15-29-08(2).

In addition to its other powers, the state board of public school education has the power, in its sound discretion, to authorize any school district to acquire sites, construct buildings, and operate schools, to discontinue such schools and liquidate the assets thereof, outside its district boundaries if the school district is affected by the impact of federal activities in its area, or if anticipated increased enrollments make it necessary, and if consent is first obtained from the school district within which the school is to be located.

N.D.C.C. § 15-21-19.

The issue presented is whether an educational telecommunications broadcast studio facility, either with or without an actual classroom for students to physically attend, constitutes a school under the above statutes requiring consent by a non-educational telecommunications system member and approval by the State Board of Public School Education before locating the broadcast facility within the geographical boundaries of a non-member district.

N.D.C.C. § 1-01-35 states:

Words used in the singular number include the plural and words used in the plural number include the singular, except when a contrary intention plainly appears.

Consequently, the statutes concerning location of schools from one district into another apply to circumstances where only one school district is seeking to so locate its facility as well as when several school districts combine into a consortium and seek to locate a school in a non-member district.

A "school" has been variously defined and described, depending on the circumstances. "The term 'school' means an institution or place for

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instruction or education." Black's Law Dictionary 1334 (6th ed. 1990). 1994 N.D. Op. Att'y Gen. L-287.

A school may also be defined as "1. a place or institution for teaching and learning; specif., a) an institution for teaching children b) a place for training and instruction in some special field, skill, etc. . . . 2. the building or buildings, classrooms, laboratories, etc. of any such establishment 3. all the students, or pupils, and teachers at any such establishment. . . ." Webster's New World Dictionary 1274 (2d coll. ed. 1982). 1993 N.D. Op. Att'y Gen. L-45.

Courts in other jurisdictions have also provided guidance on the determination of what constitutes a school. "A school the court holds to be an institution consisting of a teacher and pupils, irrespective of age, gathered together for instruction in any branch of learning, the arts or the sciences." Benvenue Parent-Teacher Ass'n v. Nash County Bd. of Educ., 167 S.E.2d 538, 540-541 (Ct. App. N.C. 1969) (quoting Weisse v. Bd. of Educ. of City of New York, 32 N.Y.S.2d 258).

In North Dakota, the school board of any public school district may establish and maintain a public adult education program as a branch of the public schools. N.D.C.C. § 15-46-01. When so maintained, the adult education program must be available to all persons over the age of 16 years who are unable to attend the public schools of the district. Id. The school board may use school district funds for the purpose of aiding and promoting any adult education program established by the school board and may charge reasonable fees to persons enrolled in adult education programs. N.D.C.C. § 15-46-04.

When the Legislature enacts a law, it is presumed to be aware of laws already in existence. Tharaldson v. Unsatisfied Judgment Fund, 225 N.W.2d 39, 45 (N.D. 1974). Further, the Legislature is presumed to act with a purpose and does not perform useless acts. State Bank of Towner v. Edwards, 484 N.W.2d 281, 282 (N.D. 1992). The Legislature initially provided direction and encouragement for educational telecommunications broadcasting in 1969. 1969 N.D. Sess. Laws ch. 188. N.D.C.C. § 15-65-01. The Educational Telecommunications Council was created to develop educational telecommunications systems statewide. N.D.C.C. § 15-65-03(1), (2), (3), and (4).

More recently, school districts have been authorized to work together in purchasing or leasing telecommunications systems or networks, and to participate with other school districts or other entities in such

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purchase or lease. 1993 N.D. Sess. Laws ch. 186, § 2. N.D.C.C. § 15-29-08(28).

Telecommunications means "[t]he science and technology of communication by electronic transmission of impulses, as by telegraphy, cable, telephony, radio, or television." The American Heritage Dictionary 1249 (2d col. ed. 1991). See also N.D.C.C. § 54-44.2-00.1(3). Such a system, involving airwave broadcasting or cable transmission, among consortium member districts does not involve acquiring sites, constructing buildings, and operations of schools under N.D.C.C. §§ 15-29-08(2) or 15-21-19. Such systems provide an efficient electronic means to distribute educational information among those points authorized to send and receive it. The location of a system or network broadcast site or studio for a teacher only is not the acquisition of a school site nor the operation of a school. The Legislature would not have authorized and encouraged statewide educational telecommunications systems and networks and authorized school districts to work together and with other entities in the promotion of educational telecommunications systems if the Legislature believed that every electronic device, whether tower, wire, radio wave, or studio, located in a non-participant school district, had to be approved by that non-participant school district where no school structure was created for students to attend. This interpretation allows meaning to be given to both the provisions concerning promotion of educational telecommunications and those limiting the locating of school facilities in another school district.

However, if a school district or districts seek to acquire a site in another school district where students, regardless of age, will physically attend for classroom instruction, then that would constitute operation of a school, and the school district where the facility is sought to be located must first approve it and the State Board of Public School Education must authorize it. N.D.C.C. §§ 15-29-08(2) and 15-21-19.

In conclusion, it is my opinion that if school district educational telecommunication system members locate system facilities such as towers, wires, or non-classroom broadcast studio facilities within a non-member school district, N.D.C.C. §§ 15-29-08(2) and 15-21-19 do not apply. However, if the facility sought to be located in a non-member school district includes classroom space for actual physical attendance of students of any age, then the educational telecommunication system members must comply with N.D.C.C. §§ 15-29-08(2) and 15-21-19.

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Sincerely,

Heidi Heitkamp  
ATTORNEY GENERAL

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