

N.D.A.G. Letter to Mushik (Aug. 15, 1990)

August 15, 1990

Honorable Corliss Mushik
State Senator
P.O. Box 188
Mandan, ND 58554

Dear Senator Mushik:

Thank you for your letter of June 7, 1990, requesting an Attorney General's opinion relating to transportation in the reorganized Mandan Public School District No. 1. First you ask whether the school board of a reorganized school district is bound by the provisions of an adopted reorganization proposal relating to the transportation of students by the school district beyond the five-year time period specified in N.D.C.C. § 15-27.3-20.

"A reorganization proposal must provide for the transportation of students." N.D.C.C. § 15-27.3-10. Payment for transportation is not imposed by statute, but by the reorganization plans that are statutorily required in the reorganization process. Kadmas v. Dickinson Public Schools, 108 S. Ct. 2481, 2470 (1988).

Five years after the reorganization takes effect a school board of a reorganized district begins to exercise the power granted to school boards generally by North Dakota law "regardless of limitations contained in the reorganization proposal." N.D.C.C. § 15-27.3-20. The school board of the reorganized district, however, may not exercise any powers prohibited or limited by certain sections, including section 15-27.3-19. See id.

N.D.C.C. § 15-27.3-19 provides that the transportation provisions of the plan may be changed by a vote. Thus, it is my opinion the voters in a reorganized school district may modify the transportation provision in the reorganization proposal to remove the district's obligation to furnish transportation only through a "majority vote of the qualified electors." Unless such provisions are modified by a majority vote of the voters in the reorganized school district, they will remain in effect.

Your second question is whether the school board of a reorganized school district may set and collect a user fee for transportation of students by the school district. N.D.C.C. § 15-43-11.2 lists certain fees which school boards are authorized to charge. This section does not authorize a school board to charge a fee for school bus transportation. N.D.C.C. § 15-34.2-06.1 permits school districts to charge a fee for transporting students; however, that provision applies only to nonreorganized school districts. Although state law authorizes nonreorganized school districts to charge fees for transportation, it does not authorize a school board in a reorganized school district to charge a transportation fee. The United States Supreme Court has stated that this distinction between reorganized and nonreorganized districts is not arbitrary or irrational and the statute is constitutional.

Kadmas v. Dickinson Public Schools, 108 S. Ct. 2481, 2490-91 (1988). Therefore, it is my opinion that the school board of a reorganized school district does not have the authority to set and collect a user fee for transportation. The other questions asked in your letter need not be answered in light of my response to the questions herein.

I trust that this discussion has satisfactorily answered your inquiry.

Sincerely,

Nicholas J. Spaeth

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