

N.D.A.G. Letter to Waldera (Dec. 10, 1984)

December 10, 1984

Honorable Gerald J. Waldera
State Senator
942 9th Avenue West
Dickinson, North Dakota 58601

Dear Senator Waldera:

Thank you for your letter of October 29, 1984, inquiring as to whether a school district is a state agency and whether school board members are state officials to the extent that if they follow an opinion of the Attorney General, they are relieved of personal liability for their actions even though the opinion is subsequently overturned by the courts.

Section 54-12-01 of the North Dakota Century Code enumerates the duties of the Attorney General including:

4. Consult with and advise the several state's attorneys in matters relating to the duties of their office.

* * *

6. Consult with and advise the governor and all other state officers, and when requested to give written opinions on all legal or constitutional questions relating to the duties of such officers respectively.

* * *

8. Give written opinions, when requested by either branch of the legislative assembly, upon legal questions.

Pursuant to Section 54-12-01, N.D.C.C., the Attorney General is not obligated to give legal opinions to school board members unless they are, in fact, state officials. In order to determine whether school board members are state officials, one need only determine whether school districts are agencies of the state. Section 32-12.1-02, N.D.C.C., contains definitions relating to the liability of political subdivisions and defines "political subdivision" as including school districts. Thus, school districts are not agencies of the state and, therefore, school board members are not state officials entitled to legal opinions from the Attorney General.

Regardless of the fact that school board members are not state officials entitled to legal opinions by the Attorney General, they may be entitled to good faith qualified immunity for actions within the scope of their powers and duties and based upon qualified legal advice.

As to whether school board members are personally liable for such actions, Section 32-12.1-04, N.D.C.C., provides as follows:

32-12.1-04. POLITICAL SUBDIVISION TO BE NAMED IN ACTION--PERSONAL LIABILITY OF EMPLOYEES--INDEMNIFICATION OF CLAIMS AND FINAL JUDGMENTS.

1. An action for injuries proximately caused by the alleged negligence, wrongful act, or omission of an employee of a political subdivision occurring within the scope of the employee's employment or office shall be brought against the political subdivision. If there is any question concerning whether the alleged negligence, wrongful act, or omission occurred within the scope of employment or office of the employee, the employee may be named as a party to the action and the issue may be tried separately. A political subdivision must defend the employee until the court determines the employee was acting outside the scope of the employee's employment or office.
2. An employee shall not be personally liable for money damages for injuries when the injuries are proximately caused by the negligence, wrongful act, or omission of the employee acting within the scope of the employee's employment or office.
3. An employee may be personally liable for money damages for injuries when the injuries are proximately caused by the negligence, wrongful act, or omission of the employee acting outside the scope of the employee's employment or office. Employees and political subdivisions may be jointly or severally liable for punitive or exemplary damages. The extent to which an employee may be personally liable pursuant to this section and whether the employee was acting within the scope of employment or office shall be specifically stated in a final judgment.
4. A political subdivision shall indemnify and save harmless an employee for any claim, whether groundless or not, and final judgment for any act or omission occurring within the scope of employment or office of the employee. The indemnification shall be made in the manner provided by this chapter and shall be subject to the limitations herein.

Whether school board members may be held personally liable for official actions is a question of fact and must be addressed on an individual basis by courts of competent jurisdiction.

Sincerely,

Robert O. Wefald

pg