

N.D.A.G. Letter to Stefonowicz (Dec. 18, 1989)

December 18, 1989

Mr. Michel W. Stefonowicz
Divide County State's Attorney
115 Main Street South
P.O. Box 289
Crosby, ND 58730-0289

Dear Mr. Stefonowicz:

Thank you for your November 20, 1989, letter. On behalf of the Westby and Grenora Public School Districts, you request an informal opinion regarding whether a tax credit can be given for the value of the non-cash assets of an annexed school district.

In your letter you state that, pursuant to N.D.C.C. § 15-27.1-11, the Westby Public School District was annexed to the Grenora Public School District. During the negotiations leading up to the annexation, the residents of the Westby Public School District were informed that they would receive a credit against taxes levied by the Grenora Public School District for all assets transferred to the Grenora Public School District in excess of \$10,000. The assets that were transferred by the Westby Public School District to the Grenora Public School District consisted of cash in the sum of \$52,348.84 and two school busses having an appraised value of \$29,000.

Following the annexation order, the residents of the former Westby Public School District were informed that they would not receive a tax credit for the appraised value of the two school busses. They were told that, based on N.D.C.C. § 15-27.2-04(6), the tax credit applied only to cash assets that were transferred to the Grenora Public School District. You state that the Grenora Public School District is willing to grant a tax credit for the appraised value of the two school busses.

The first question you ask is whether N.D.C.C. § 15-27.2-04(6) allows a tax credit for any non-cash assets that are transferred to the receiving school district. N.D.C.C. § 15-27.2-04(6) states:

6. If the annexation is approved by the state board, the county may cause a tax to be levied against each district affected in accordance with section 15-47-21 which will equalize the several interests fairly. The unobligated cash balance in excess of ten thousand dollars not designated for indebtedness shall be a credit for the residents of the annexed school district against taxes levied by the receiving school district in the year or years following the annexation depending on the average local effort based on the previous five-year average as calculated by the county superintendent.

The foregoing section provides a tax credit for the unobligated cash balance in excess of \$10,000.

At issue is whether a school district also has the authority under N.D.C.C. § 15-27.2-04(6) to grant a tax credit for assets other than "[t]he unobligated cash balance in excess of ten thousand dollars not designated for indebtedness."

"The taxing power is exclusively a legislative function ..." Scott v. Donnelly, 133 N.W.2d 418, 423 (N.D. 1965). "The legislature is empowered to write the rules that govern the levy of taxes, the collection thereof, and the purposes for which the resulting revenues may be expended." Dornacker v. Olson, 248 N.W.2d 844, 850 (N.D. 1976). Generally, the legislature may not delegate the sovereign power of taxation. However, the legislature usually vests political subdivisions with the power to provide revenue to defray expenses of local government and to pay for local improvements made for public use and benefit. See, In re Garrison Diversion Conservancy Dist., 144 N.W.2d 82 (N.D. 1966). School districts have no powers except those conferred by statute. Myhre v. School Bd., 122 N.W.2d 816, 819 (N.D. 1963). "[I]n defining the powers of school officers, the rule of strict construction applies, and any doubt as to the existence or extent of such powers must be resolved against the school board." Id. at 819-20.

Thus, the legislature has exclusive authority over taxation, which it may delegate under certain circumstances. However, if the legislature does not expressly delegate taxing authority, that authority remains exclusively with the legislature.

No statute exists wherein the North Dakota legislature allows a school district to grant a tax credit to an annexed school district except for the tax credit allowed by N.D.C.C. § 15-27.2-04(6). This provision must be strictly applied, and doubts are to be resolved against the school board. Myhre, 122 N.W.2d at 819-20. A strict application of N.D.C.C. § 15-27.2-04(6) allows for a tax credit only for cash assets. N.D.C.C. § 15-27.2-04(6) does not authorize a tax credit for non-cash assets.

The second issue you raise is whether a school board may grant a tax credit for non-cash assets without statutory authority. As discussed above, a school board may only do what it is expressly authorized to do by the legislature. Myhre, 122 N.W.2d at 816-819. Thus, it is my opinion that a school board may not grant a tax credit for non-cash assets.

Sincerely,

Nicholas J. Spaeth

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