

N.D.A.G. Letter to Torkelson (Dec. 18, 1992)

December 18, 1992

Merle A. Torkelson
State's Attorney
McLean County Courthouse
PO Box 1108
Washburn, ND 58577

Dear Ms. Torkelson:

Thank you for your November 19, 1992, letter asking whether a school board may require the payment of fees for extracurricular or noncurricular activities, as authorized by N.D.C.C. § 15-43-11.2, before a student is allowed to attend or participate in those activities for which the fee was charged.

Your question is answered by 1990 N.D. Op. Att'y Gen. 66, 68, wherein it was stated:

N.D.C.C. § 15-43-11.2 authorizes a public school district to charge students admission fees for extracurricular or noncurricular activities when attendance at those activities is optional. In 1981, this office issued an opinion that stated N.D.C.C. § 15-43-11.2 does not permit a school district to require every student to purchase a season ticket for extracurricular activities. 1981 N.D. Op. Att'y Gen. 81-109. The opinion stated that "it is the Attorney General's opinion that the legislature intended to authorize these admission fees or charges only in those instances where the student actually attended the extracurricular or noncurricular activity." *Id.* The opinion further stated: "if attendance at the extracurricular or noncurricular activity is optional and the student desires to attend that activity, then a mandatory fee may be charged. However, a mandatory activity fee charged to a student whether or not that student desires to attend the activity is impermissible." *Id.* (Emphasis in original.)

The 1981 opinion continues to constitute the opinion of the Attorney General. Thus, it is my opinion that a school district may require a student to pay an admission fee for extracurricular or noncurricular activities, such as athletics, when attendance at the activities is voluntary and the student desires to attend the activities.

The 1990 opinion quoted above, citing a 1981 opinion, states clearly that for fees which are authorized by law to be charged, "a mandatory fee may be charged." If a fee is mandatory, then attendance or participation in the activity may be restricted or prevented. However, a school board should not overlook the fact that N.D.C.C. § 15-43-11.2 also provides that "[a] board may waive any fee if any pupil or his parent or guardian shall be unable to pay such fees."

Sincerely,

Nicholas J. Spaeth

rel/jfl