

N.D.A.G. Letter to Hoy (Dec. 19, 1989)

December 19, 1989

Mr. Robert G. Hoy
Cass County State's Attorney
P.O. Box 2806
Fargo, ND 58108

Dear Mr. Hoy:

Thank you for your October 18, and December 12, 1989, letters wherein you requested an opinion regarding the applicability of N.D.C.C. § 15-27.4-03 to the dissolutions of the Noble and Pleasant Valley school districts. I apologize for the delay in responding to your initial request.

In your letter you indicated that on February 15, 1989, you requested an opinion as to the proper recipient of cash assets possessed by formerly nonoperating school districts (Noble and Pleasant Valley school districts) which were dissolved and attached to a neighboring district (Cass Valley North school district) pursuant to N.D.C.C. § 15-27.1-11 and N.D.C.C. ch. 15-27.4. Our office issued an opinion on February 22, 1989, discussing this issue and concluding that "the assets of a school district which has been dissolved and attached to another district shall be considered the assets of the receiving district."

After the foregoing opinion was issued, the 1989 Legislature enacted N.D.C.C. § 15-27.4-03, which has an effective date of July 1, 1989. This statute provides, in part:

The unobligated cash balance in excess of ten thousand dollars which is not designated for indebtedness of any school district dissolved after January 1, 1989, is a credit for the residents of the dissolved school district against taxes levied by the school district the dissolved school district is attached to in the year of years following the dissolution depending on the average local effort based on the previous five-year average as calculated by the county superintendent.

(Emphasis supplied.)

You ask whether this statute is applicable to the dissolutions of the Noble and Pleasant Valley school districts which occurred between January 1, 1989, the retroactive date indicated in N.D.C.C. § 15-27.4-03 and July 1, 1989, the effective date of N.D.C.C. § 15-27.4-03. You also inquire whether the Legislature has authority to pass a law which applies retroactively to school district dissolutions.

N.D.C.C. § 1-02-10 provides that a statute may only apply retroactively if it is expressly declared to be retroactive. An act or statute will be applied retroactively if its language

shows a legislative intent that it be so applied. In re W.M.V. 268 N.W.2d 781 (N.D. 1978).

Art. VII, § 2 of the North Dakota Constitution states "The Legislative Assembly shall provide by law for the establishment and the government of all political subdivisions. Each political subdivision shall have and exercise such powers as provided by law." N.D. Const. art. VIII § 2. A school district is a political subdivision. 1951 N.D. Op. Att'y Gen. 150. School districts are subject to legislative control and "have no powers except those conferred by statute." Myhre v. School Bd. of N. Cent. Pub. School Dist., 122 N.W.2d 816, 819, (N.D. 1963).

The language of N.D.C.C. § 15-27.4-03 expressly states that it applies to school district dissolutions occurring after January 1, 1989. It is a legislative requirement that a tax credit be applied "against taxes levied by the school district the dissolved school district is attached to" if a school district with unobligated cash balance in excess of \$10,000, not designated for indebtedness was dissolved between January 1, 1989, and July 1, 1989, N.D.C.C. § 15-27.4-03.

It is my opinion N.D.C.C. § 15-27.4-03 applies to a school district dissolution occurring between January 1, 1989, and July 1, 1989, and involving an unobligated cash balance in excess of \$10,000 which was not designated for indebtedness.

You also question the constitutionality of N.D.C.C. § 15-27.4-03. You contend that the application of N.D.C.C. § 15-27.4-03 to a school district which was dissolved between January 1, 1989 and July 1, 1989, would violate constitutional guarantees of equal protection and due process. A political subdivision, however, is not entitled to the benefit of those guarantees.

A political subdivision, as an agency of the state in the exercise of governmental powers, generally has no privileges or immunities under the Federal Constitution which it may invoke in opposition to the will of the State.

County of Stutsman v. State Historical Society of N.D., 371 N.W.2d 321, 330 (N.D. 1985). A school district is a political subdivision, not a person and, thus, is not protected by the constitutional guarantees of equal protection and due process. Id.

In conclusion, N.D.C.C. § 15-27.4-03 does affect those school districts which were dissolved between January 1, 1989, and July 1, 1989. If a school district was dissolved within this period of time and if it had an unobligated cash balance in excess of \$10,000 which was not designated for indebtedness, then N.D.C.C. § 15-27.4-03 provides for a tax credit. With regard to the school districts in question here, I call your attention to the fact that in testimony before the Legislative committees considering this provision, Pleasant Valley School District was specifically identified as a district which would be affected by this statute. Al Koppang testified the "land in Pleasant Valley School District would receive [a] tax credit . . ." Hearing on H.1022 Before the House Appropriations Subcommittee on Education and Environment, 51st Leg. (April 14, 1989) (Statement by Al Koppang).

You indicated that, upon dissolution, the Noble school district had cash assets of \$2,000 and the Pleasant Valley school district had cash assets of \$33,000. If the indicated amount in cash assets is the same as the unobligated cash balance not designated for indebtedness, then N.D.C.C. § 15-27.4-03 allows the property owners of the Pleasant Valley school district to benefit from a tax credit in the amount of \$23,000.

I hope this information is helpful to you.

Sincerely,

Nicholas J. Spaeth

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