

N.D.A.G. Letter to O'Connell (Dec. 19, 1989)

December 19, 1989

Honorable David O'Connell
State Senator
District 6
Route 1, Box 78
Lansford, ND 58750

Dear Senator O'Connell:

Thank you for your July 14, 1989, letter. On behalf of the Glenburn Public School District, you request an informal opinion regarding the meaning of N.D.C.C. § 15-21-19, which deals with the powers of the State Board of Public School Education (State Board). I apologize for the delay in responding to your letter.

The first issue you raise is whether the last clause of N.D.C.C. § 15-21-19 requires a school district that wishes to operate a school outside of its boundaries to obtain the consent of the school district where the school is to be located before it can be approved by the State Board. The wording of this statute is clear in this regard. N.D.C.C. § 15-21-19 provides, in part:

[T]he state board . . . shall have the power to authorize any school district to . . . operate schools . . . outside of its boundaries if the school district is affected by the impact of federal activities in its area, or if anticipated increased enrollments make it necessary, and if consent is first obtained from the school district within which the school is to be located.

(Emphasis supplied.)

The State Board has the power to authorize the operation of a school outside the district's boundaries only if both of the enumerated prerequisites are met. Thus, the school district must obtain the consent of the school district where the school is to be located before the State Board may authorize the operation of a school outside the district's boundaries.

The second issue you present is whether a district operating a school outside of its boundaries needs the consent of the district where the school is located to discontinue operation and liquidate the assets of the school. I presume you ask this question because the final clause states "if consent is first obtained from the school district within which the school is to be located" (emphasis supplied). This language implies the consent requirement only applies when a school is to be created. However, prior portions of the statute apply to both the creation and discontinuance of a school. It is, therefore, unclear whether this clause applies to the discontinuance as well as to the commencement of a school.

The original statute upon which the current N.D.C.C. § 15-21-19 is based was introduced in a bill to the 1957 Legislature. It stated, in part:

In addition to its other powers, the state board of public school education shall have the power, in its sound discretion, to authorize any school district to acquire sites, construct buildings, and operate schools, to discontinue such schools and liquidate the assets thereof, outside its district boundaries if the school district is affected by the impact of federal activities in its area.

H.B. 616, 35th N.D. Legis. § 1 (1957). Before H.B. 616, the 1957 Legislature amended the bill to include the clause, "and if consent is first obtained from the school district within which the school is to be located." 1957 N.D. Sess. Laws ch. 130, § 1. No legislative history indicates the reason the Legislature adopted this amendment.

The 1957 amendment requires consent when a new school is to be put into operation. Because the amendment does not directly address discontinuance of a school, it appears that when the 1957 Legislature adopted this amendment, it did not have that eventuality in mind. It is my opinion that N.D.C.C. § 15-21-19 does not require a district operating a school outside of its boundaries to obtain the consent of the district in which the school is located before discontinuing operation of the school. There are other statutes, however, that may impose conditions upon discontinuing operation of a school.

N.D.C.C. § 15-47-02.1, which generally relates to the discontinuance of schools, states:

Any elementary or high school may be discontinued by action of the school board when proper and convenient school facilities for the pupils can be provided in some other public school. In determining what constitutes proper and convenient school facilities, the board shall consider the distance of each child from the nearest other school and all surrounding circumstances. The board may furnish transportation to the nearest school, or may pay an extra allowance over and above the schedule of payments provided for in section 15-34.2-03 or furnish the equivalent thereof in tuition or lodging at some other public school. In case of a dispute between a parent or guardian of a pupil of the school district and the board as to whether the board has furnished or arranged to furnish adequate facilities, the matter may be submitted by such parent or guardian to the board of arbitration consisting of the county superintendent of schools, one arbitrator named by the parent or guardian, and one arbitrator named by the board, and the determination of the arbitrators, after hearing, shall be binding.

N.D.C.C. § 15-47-02.1 (emphasis supplied). Thus, no school board may discontinue an elementary or high school unless proper and convenient school facilities for the pupils can be provided in some other public school.

Depending upon the circumstances, two additional statutes may apply when a school district discontinues operation of a school. The first is N.D.C.C. § 15-27.5-06, passed in 1989, regarding school district agreements involving military installation school districts. It provides, in part:

2. Before the state board of public school education requests that a school district be established pursuant to this chapter on the Minot air force base, the Glenburn public school district and the Minot public school district must enter into an agreement regarding the provision of education to the students residing on the air force base. The agreement must be approved by the state board of public school education. The Minot public school district and the Glenburn public school district, in entering into an agreement, must take into consideration current and potential revenues, including current and potential revenues from property taxes, in lieu of property taxes, and federal and state funds that are distributed to school districts based on census, and losses that may occur as a result of the agreement. The state board of public school education must receive approval from the United States secretary of education prior to the formation of the proposed school district.
3. Before the state board of public school education requests that a school district be established on a military installation other than the Grand Forks air force base and the Minot air force base, pursuant to this chapter:
 - a. The school district providing education to students residing on a military installation must enter into an agreement regarding the provision of education to those students. The agreement must be approved by the state board of public school education. School districts entering into the agreement must take into consideration current and potential revenues and losses that may occur as the result of the agreement; and
 - b. The state board of public school education must receive approval from the United States secretary of education regarding the formation of the proposed school district.

N.D.C.C. § 15-27.5-06(2) and (3).

Thus, before a school board may discontinue operation of a school in conjunction with the State Board's establishment of a school district on a military installation pursuant to N.D.C.C. § 15-27.5-06, the affected school districts must reach agreement concerning how education will be provided to the students residing on the military installation.

The second statute that may apply when a school district discontinues operation of a school is N.D.C.C. § 15-27.3-14. This section addresses the continuance of elementary schools in reorganized districts. N.D.C.C. § 15-27.3-14 provides:

Each elementary school included in reorganized school districts must be kept in session as provided by law, except that any school may be discontinued when the school board in the district where the school is located, by a unanimous vote, approves its closing. The school board may reopen such school at any time upon its own motion. The school may be reopened only at the beginning of the next regular school term which follows by at least ninety days the date of the school board's action.

This statute applies to each elementary school included in a reorganized school district that was in existence at the time of the reorganization.

The third issue you raise is whether a military installation is considered a part of a school district if the legal description of its property lies within the boundaries of the school district and it is listed in the legal description of the school district. Pursuant to N.D.C.C. § 15-27.5-01, the State Board has the authority, on the request of the base commander of a military installation, to form a school district on that military installation. A military installation would be considered part of another school district if three factors are met: the military installation has not formed its own school district; the property comprising the military installation must lie within the boundaries of the other school district; and the military installation must be listed in the legal description of that other school district.

The final issue you raise is whether, when a military installation is involved, the consent required by N.D.C.C. § 15-21-19 must come from the school district where the school is to be located or from the military installation. The statute states that consent must come from the school district. However, if the State Board has formed a school district on a military installation, then a school district that wants to operate a school outside its boundaries, on land within the military installation school district, must obtain the consent required by N.D.C.C. § 15-21-19 from the military installation school district.

I hope you will find this opinion responsive to your questions.

Sincerely,

Nicholas J. Spaeth

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