

**OPINION
63-201**

July 25, 1963 (OPINION)

SCHOOL DISTRICTS

RE: Bond Issues - Board of Budget Review

This is in reply to your letter of July 23, 1963, concerning the board of budget review in Guelph Public School District.

You state the Guelph Public School District is contemplating adopting an initial resolution for bond issue to build an elementary school. Guelph itself is an unincorporated village within Dickey County. The school operated by the Guelph School District is in Guelph. There are no incorporated cities or villages within the boundaries of Guelph Public School District. You ask whether or not it would be necessary for the Guelph Public School District to submit the proposal for the issuance of bonds to a board of budget review as provided by section 40-41-06 of the North Dakota Century Code, and, if so, how the board would be constituted.

Section 40-41-06 of the North Dakota Century Code requires all proposed bond issues of the school district, before being submitted to a vote of the electors, to be submitted to the board of budget review. Section 40-41-01 of the North Dakota Century Code makes provisions for the board of budget review and provides as follows:

BOARD OF BUDGET REVIEW - REQUIRED IN CERTAIN MUNICIPALITIES - HOW CONSTITUTED. Every municipality in this state, except townships, shall have a board of budget review. The board shall consist of seven members and shall be constituted as follows:

1. Two members from the governing body of the municipality;
2. Two members from the local school board;
3. One member from the park board; and
4. Two members representing the public at large.

If the municipality has no park board, three members shall represent the public at large. In cases where a member of a board of budget review is not a resident of the governmental subdivision submitting a budget or bond issue for consideration, such member shall not vote upon the question submitted. In the event the remaining members constitute an even number the chairman shall not vote."

"Municipality" for the purposes of title 40 is defined as follows:

'Municipal corporation' or 'municipality' shall include all cities, towns, and village organized under the laws of this

state, but shall not include any other political subdivision;"
(See section 40-01-01(1) of the North Dakota Century Code.)

Since Guelph is not incorporated either as a city or village it is obvious it is not organized under the laws of this state and the provisions of section 40-41-01 do not apply to it. In view of the fact there is no incorporated city or village within the Guelph School District it would be impossible to constitute a board of budget review within the school district to which the proposed bond issue could be submitted. The Legislature has apparently recognized this situation might exist. Chapter 21-03 of the North Dakota Century Code governs the issuance of bonds by political subdivisions of the state. Section 21-03-07 of this chapter provides in part:

No municipality having a board of budget review shall issue any bond or hold any election to secure authority to issue any bond, until there has been compliance with the provisions of sections 40-41-06 and 40-41-07." (Emphasis supplied).

"Municipality" for the purposes of chapter 21-03 is defined by section 21-03-01(1), as amended, as follows:

'Municipality' shall mean a county, city, village, township, public school district, or park district empowered to borrow money and issue written obligations to repay the same out of public funds or revenue;"

A public school district is a "municipality" within the meaning of section 21-03-07, quoted in part above. The obvious implication of the sentence quoted from section 21-03-07 is that if a municipality (school district) does not have a board of budget review the provisions of section 40-41-06 and section 40-41-07 of the North Dakota Century Code, requiring submission of the proposed bond issue to a board of budget review, are not applicable.

It is, therefore, our opinion that the proposed bond issue of the Guelph Public School District need not be submitted to a board of budget review since no board of budget review could be validly constituted under existing law.

HELGI JOHANNESON

Attorney General