

OPINION
63-227

September 12, 1963 (OPINION)

STATE BOARD OF HIGHER EDUCATION

RE: Junior College Payments

You have presented three questions to this office concerning the above matter. The questions are as follows:

1. "Can we legally pay \$300 on the basis of the 1962-1963 enrollments? (Payments must be based on preceding years enrollment and we based first payment on enrollments the fall before the appropriations came into effect). \$300 increase became law July 1."
2. "Before paying the \$300 to Devils Lake and BJC would it not be a good idea to have a statement from them to the effect that the required mill levy is being assessed? Williston is asking for \$200. Should we not also seek mill levy information to determine if they qualify for the additional \$100? If payment is based on 1962-63 enrollment, and mill levy minimum was passed in 1963, are we correct in assuming they would not be eligible for \$300 payment until next year?"
3. "The reports are actually coming from the Deans and/or Directors. According to law, should not the payments be made in the name of the school district?"

In reply to your first question, we note the provisions of section 15-18-07 of the North Dakota Century Code, as amended by the 1963 Legislature, which provides in part:

* * * In addition, the sum of one hundred dollars shall be paid immediately preceding October first of each year for every student in attendance during the two full semesters or fall, winter and spring quarters at a junior college or educational center, provided the school district, city or county shall levy taxes of not less than four mills for the support of such junior college or educational center in accordance with the provisions of sections 15-18-03, 15-18-04.2 or 15-18-05.* * *."

We believe the additional \$100 may be paid on the basis of the 1962-1963 enrollment although the increase of \$100 did not become effective until July 1, 1963. We do not believe it was the intent of the Legislature to require the districts, cities or counties making this additional levy to wait an additional year in order to become eligible for this additional payment. You will note there is no requirement in the above-quoted statutes that the levy shall have been made for any specific length of time. The statute uses the phrase "shall levy." If a levy is being made for the current year we believe this is sufficient to qualify the district, city or town in

question for the additional aid.

We believe the Board of Higher Education should require a certificate from the County Auditor of the various counties involved that the school district, city or county is making the levy required by law in order to entitle the school district to the additional one hundred dollars per student.

We further believe that information concerning the mill levy in the Williston District should also be secured. If the Williston District has authorized the four mill levy for the present year they would, in our estimation, be eligible for the additional one hundred dollars per student insofar as this requirement is concerned. Although payment is based on the 1962-63 enrollment and the mill levy minimum requirement was passed in 1963, we believe such districts are eligible for the additional payment this year and need not wait an additional year.

With regard to your third question, section 15-18-09 of the North Dakota Century Code, as amended, requires the dean or chief administrative officer of each junior college or educational center operated by a state-supported institution of higher education or the superintendent of each school district claiming state aid payments to file a verified statement with the Commissioner of Higher Education. The warrants issued by the State Auditor are, however, to be issued to the school districts entitled to payment.

HELGI JOHANNESON

Attorney General