

**OPINION
68-195**

April 25, 1968 (OPINION)

Honorable M. F. Peterson

Superintendent

Department of Public Instruction

RE: Schools - School Board Members - Compensation

This is in reply to your letter of April 23, 1968, relative to compensation of a school board member. You state the following facts and questions:

"According to the law, a school board member is entitled to \$5.00 per meeting not to exceed 18 meetings per year. This, it seems to me, is the maximum compensation for board meetings even though a district is receiving federal funds for programs. For example, under Title I, the school board members would not be entitled to additional compensation.

"My major question, however, is concerning a school board member who has been selected by his peers to administer a certain federal aid program - let us say, Title I of the Elementary and Secondary Education Act. Would it be lawful for the district to pay him for his services either out of local school district funds or federal funds for the administrative and supervisory services that would be part of his duties?"

Regardless of the funds, i.e., local school district or federal, used to compensate the board member, this situation would appear to involve a contract between the board member and the school district. As such, it would involve the statutes which are otherwise applicable in any contract between a member of the school board and the school district. Thus, section 15-49-02 of the North Dakota Century Code, as amended, provides as follows:

"15-49-02. PERSONAL INTEREST IN SCHOOL DISTRICT CONTRACTS PROHIBITED - EXCEPTIONS. No member of the school board, and no other school officer, in a school district having a population of over ten thousand, shall be interested personally, directly or indirectly, in any contract for the building or making of any improvements or repairs to school buildings, or for the erecting of any school building, or for furnishing any materials or supplies for the district, or in any contract requiring the expenditure of school funds except for the purchase of fuel and the procuring of insurance and such supplies as are in daily use. Any violation of the provisions of this section shall be a misdemeanor."

However, section 12-10-06 of the North Dakota Century Code provides:

"PERSONAL INTEREST IN CONTRACT BY PUBLIC OFFICER - PUNISHMENT - EXCEPTION. Every public officer authorized to sell or lease

any property, or make any contract in his official capacity, who contrary to law voluntarily becomes interested individually in such sale, lease, or contract, directly or indirectly, is guilty of a misdemeanor. Provided, however, that contracts of purchase or employment, by a township, a municipality having a population of not more than ten thousand, according to the last official census, a school district or a park district, may be entered into with an officer of such township, municipality, school district, or park district, if such contracts are unanimously approved by the other members of the governing body of the township, municipality, school district, or park district and declared, by a finding unanimously adopted by such other members and entered in the official minutes of the governing body, to be necessary for the reason that the services or property obtained is not otherwise available at equal cost."

Under this provision a contract for personal services of one of the board members may be entered into between such board member and the school district under the conditions set forth in the immediately above quoted statute, i.e., such contracts must be unanimously approved by the other members of the school board and declared, by a finding unanimously adopted by such other members of the board and entered in the official minutes of the board, to be necessary for the reason that the services are otherwise available at equal cost. Unless these conditions are met it would not be lawful for the district to pay a school board member for services either out of local school district funds or federal funds for the administrative and supervisory services necessary to administer a federal aid program.

HELGI JOHANNESON

Attorney General