

**OPINION
68-198**

February 19, 1968 (OPINION)

Honorable M. F. Peterson

Superintendent

Public Instruction

RE: Schools - State Aid Payments - Method of Computation

This is in reply to your letter of February 8, 1968, relative to Foundation payments. You ask whether the fall Foundation payments may be made on the basis of then current enrollments.

Section 15-40-16 of the North Dakota Century Code, as amended, governs the method of making state aid payments to school districts and provides, in part, as follows:

"* * * Immediately upon the termination of the school year and in no event later than July fifteenth of each year the clerk of each district claiming payments from the county equalization fund under the provisions of this chapter shall file with the county superintendent of schools a verified claim stating the name, residence, and the average daily membership as provided for in section 15-40-14, and number of units of high school work taken by each enrolled high school student for whom payment is claimed. The county superintendent * * * shall certify to the superintendent of public instruction on or before September first of each year the number of enrolled students for which each district in his county is entitled to receive payment from the county equalization fund. * * * Not later than December first the superintendent of public instruction shall certify to the department of accounts and purchases a list of the school districts and schools not operated by school districts entitled to payments from the county equalization fund, together with the amounts to which the several districts are entitled."

Section 15-40-19 of the North Dakota Century Code, as amended, provides in part as follows:

"* * * The superintendent of public instruction shall certify to the department of accounts and purchases a list of all county equalization funds in the state together with a statement of payments equal to one-fourth of the total payments made to each respective equalization fund during the previous fiscal year and the department of accounts and purchases shall pay each county equalization fund such amounts due from the general fund, within the limits of legislative appropriation, upon warrants prepared and issued by the department and signed by the state auditor on or before September fifteenth of each year. Upon receiving the certification of the county superintendents, the superintendent of public instruction, * * * shall determine what amounts in addition to the September

fifteenth payments are necessary to constitute one-half of the payments due to each county equalization fund for the current school year and shall certify to the department of accounts and purchases a list of all county equalization funds in the state together with a statement of the payments due such funds. The department of accounts and purchases shall pay to each county equalization fund from the general fund, within the limits of legislative appropriation, upon warrants prepared and issued by the department and signed by the state auditor, the amounts needed in addition to the September fifteenth payment in order to constitute fifty percent of the sum found to be due under the provisions of this chapter on or before February first payments equal to one-fourth of the total payments made to each respective equalization fund and the balance on or before April first."

The payments from the county level to the school district level are governed by section 15-40-29 of the North Dakota Century Code, as amended; however, this section does not appear of pertinence to the question at hand.

The basis for the payments is the certifications by the school district to the county superintendent of schools as specified in section 15-40-16. The section specifies that not later than July fifteenth of each year, the clerk shall make such certification to the county superintendent of schools. The county superintendent of schools must make their certification of the State Superintendent of Public Instruction on or before September first of each year. It is obvious, therefore, that the enrollment figures used in computing the state aid payments are those of the preceding school year.

The Supreme Court of North Dakota in Zenith School District v. Peterson, 81 N.W. 2d. 764 (N.D. 1957), was considering the statutes governing state aid payments. The court stated, page 768:

"State aid to school districts, however, is not reimbursement for or payment for anything. It is a grant in aid and in so far as the local districts are concerned it is in the nature of a gratuity. We have no doubt but that the purpose of the many acts relating to state aid to school districts was to provide for and regulate payments for state aid out of the equalization fund after the effective date of such acts. The fact that payments each year were to be computed upon the records of the previous year is of no significance. The payments were for the year in which they were made, but because complete records were not available for that year at the time the payments were made, they were, as a matter of convenience, computed on the previous year's record. * * *

"While we think the language of the statute under consideration is so clear that there is no occasion to resort to extrinsic aids to construction we think it well to point out that the construction we have adopted is in accord with the construction that the superintendent of public instruction has given to this statute and every like statute ever since the program of state aid to school districts was first inaugurated. * * *"
(Emphasis supplied.)

The statutes and the case above cited make it clear that the state aid payments are based upon enrollment figures of the preceding school year. The statutes do not provide a method or procedure for using the current enrollment for such payments. If the method of making payments is to be altered, it will require legislative action to do so.

In summary, it is our opinion that the current statutes do not permit Foundation payments to schools to be made on the basis of current enrollments, but rather such payments must be based on the preceding year's enrollment as provided by statute.

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