

**OPINION
69-300**

August 6, 1969 (OPINION)

Mr. Howard J. Snortland

Assistant Superintendent

Department of Public Instruction

RE: Schools - Buildings - Site Owned by School District

This is in reply to your letter of July 19, 1969, relative to the Riverdale School District. You state the following facts and questions:

The Riverdale School Board provides an educational program, kindergarten through the twelfth grade, in buildings and on a site owned by the U.S. Office of Education. The buildings were constructed on a temporary basis and the school board finds it almost impossible to provide heat and maintenance.

A request has been made to the U.S. Office of Education for funds under Public Law 815 to either construct new facilities or to repair the existing buildings. Section 10 of Public Law 815 provides that funds under this section can be used if no state or local funds can be used by the district to construct property on a site owned by the federal government.

Subsection 7 of section 15-29-08 of the North Dakota Century Code reads as follows: 'To improve lots and sites, and to build, alter, enlarge, improve, and repair such school houses, teacherages, dormitories, outhouses, appurtenances, as it may deem advisable upon lots and sites owned by the district.'

In order that this district receive funds under this section, it is necessary that our office have an opinion as to whether a school district in North Dakota can use its own funds or state funds to construct buildings on a site owned by the federal government.

We respectfully request your opinion as to whether the Riverdale School District can use its funds or state funds to construct a building on this site owned by the U.S. Office of Education."

Section 15-29-08 of the North Dakota Century Code, as amended, subsection seven of which is quoted above, sets forth the powers and duties of the school board of a public school district. This is the only statutory provision authorizing a school board to construct school buildings. It is specific and permits no interpretation. It requires that if a school board builds a school building, such building must be upon lots and sites owned by the district. If the building were not on a site or lot owned by the school district, there would be no statutory authority to construct the building. The Supreme Court of this State has repeatedly held that school boards

have no powers except those conferred by statute and may exercise only those powers expressly granted by statute or necessarily implied therefrom. See, e.g., *Myhre v. School Board of North Central Public School District No. 10, Richland County*, 122 N.W.2d. 816 (ND 1963).

In direct reply to your question, it is our opinion that the Riverdale School District may not construct a building on a site not owned by the school district, whether that site is owned by the federal government or by some private individual.

HELGI JOHANNESON

Attorney General