OPINION
71-300

May 7, 1971 (OPINION)

Mr. H. J. Snortland

Assistant Superintendent

of Public Instruction

RE: School District - Revolving Fund - Use

This is in reply to your letter of April 29, 1971, in which you state the following facts and questions:

> "The 1971 session of the legislature passed House Bill No. 1246 which amends section 15-29-13 of the North Dakota Century Code to permit a school board by resolution to establish an incidental revolving fund of $1,000 from which the superintendent or school administrator may draw checks. The bill also amended subsection 4 or section 57-39.2-04 to exempt gross receipts from the sale of tickets from the payment of sales tax.
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> "A number of questions have arisen in the state by school boards and administrators about the effect of the passage of this bill. We respectfully request your opinion on the following questions:
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> 1. May a school district continue to maintain high school activity accounts and also continue to pay sales tax on gross receipts rather than establish the incidental revolving fund provided by House Bill No. 1246?
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> 2. Since daily expenditures from high school activity funds now exceed the $1,000 limit of the incidental revolving fund, may a school district continue an imprest fund which is greater than $1,000?
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> 3. The maximum amount in the incidental revolving fund is limited to $1,000. How can the school district handle receipts and expenditures which are greater than $1,000?
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> 4. Much of the income which is presently going into the high school activity accounts consists of collections for such things as class rings and caps and gowns which are not gross receipts from the sales of tickets. May the school board establish some method of handling such money without placing it in the general operating fund of the district which will increase the cost per pupil with expenditures which are not necessarily educational in nature?"

Before we consider the specific questions which are presented in your letter, we should note that the question of establishment of a school activity fund, which is expended only upon the signature of the superintendent of the school district or some other school district

official and not in the manner required by statute, and the question of whether sales tax must be remitted on certain sales by the school district were not necessarily identical problems. The question of charging sales tax brought the matter of expenditure of school district funds into question also. However, the expenditure of school district funds, including activity funds, was a separate matter. Prior to the enactment of House Bill No. 1246, there was only one method of expenditure of school district funds. That method was prescribed by section 15-29-13 of the 1969 Supplement to the North Dakota Century Code and provides as follows:

> "FORM OF WARRANTS - HOW WARRANTS PAID BY TREASURER. The treasurer shall pay out moneys only upon the presentation of a warrant signed by the president of the board and countersigned by the clerk, and only if there is money in his hands or subject to his order sufficient for the payment thereof. The form of warrant to be used by a school district shall be prescribed by the superintendent of public instruction. When making payment of a warrant on school district funds, the school district treasurer shall countersign the warrant and insert the name of the depository bank thereon, and the warrant, when so countersigned, shall become a check on the school district depository. Immediately upon countersigning any warrant and inserting the name of the depository bank thereon, he shall enter the payment in his treasurer's record. The treasurer shall not issue a check on the depository bank except as provided in this section."

You will note the above quoted statute does not refer to a "general fund" of the school district or any other specific fund of the school district. It applies to all school district moneys, regardless of the designation of the fund in which they are deposited. Generally speaking, the money deposited in the so called "school activity accounts" must be considered as school district funds. They are obviously not the funds of any one individual. They are ordinarily collected in the name of the school district and must be considered as funds of the district. The only legal manner in which such funds could be expended, prior to the enactment of House Bill No. 1246, was by a warrant signed by the president of the school board, and countersigned by the clerk and the treasurer of the board. Any other expenditure was not in accordance with statute. Therefore, any authorization by the school board to deposit moneys directly into an activity fund upon which the superintendent or some other school district official could draw checks in any manner other than prescribed by section 15-29-13, quoted above, was not in accordance with the statute.

House Bill No. 1246 added the following paragraph to section 15-29-13:

> "The school board may, by resolution, establish an incidental revolving fund in the depository bank and designate the superintendent of schools or such other school administrator as the board may select to draw checks directly on such fund for such incidental expenses as the school board may direct in the resolution. The amount in such fund shall be drawn from the general fund as provided in the first paragraph of this section

and shall never exceed one thousand dollars at any one time. The superintendent or other school administrator designated to draw checks on such fund shall submit a monthly report to the school board listing the checks drawn, the payee and the purpose for which the check was drawn."

Your questions will be considered in the order presented:

1. Whether or not a school district pays sales tax on certain collections is immaterial to the expenditure of school district funds. As noted above, the statute permits the expenditure of school district funds only in the manner prescribed by statute. Therefore, if a school district were to continue to maintain high school activity accounts and also continue to pay sales tax on gross receipts rather than establish the incidental revolving fund provided by House Bill No. 1246, the school district officers would be in violation of the statute for permitting the expenditure of school district funds in a manner not prescribed by statute. The payment of sales tax by the school district would not diminish that violation. In this connection, we would note that section 12-10-02 of the North Dakota Century Code provides that any public officer or employee who has the power to expend public funds or to cause public funds to be expended and who willfully shall expend such funds, or cause the same to be expended, contrary to law, is guilty of misappropriation of public funds and is punishable as for a felony.

We would emphasize that the enactment of House Bill No. 1246 did not prohibit the expenditure of school district funds except as provided in section 15-29-13. Any method of expending school district funds other than as prescribed by the statute has always been prohibited. The fact that some school districts, through custom, have been expending school district funds in a manner other than as prescribed by statute does not alter the fact the funds were not being expended in accordance with statute. The amendment to section 15-29-13 in House Bill No. 1246 is actually an attempt to make lawful a practice which heretofore has not been in accordance with law.

It is our opinion a school district may not continue to maintain high school activity accounts and also continue to pay sales tax on gross receipts rather than establish the incidental revolving fund provided by House Bill No. 1246 unless the activity fund is expended in accordance with the provisions of section 15-29-13; i. e., the checks are signed by the president and countersigned by the clerk and treasurer of the school district. In such instance, there would be no sales tax due.

2. Unless the "imprest" fund is expended in accordance with section 15-29-13; i. e., the checks are signed by the president and countersigned by the clerk and treasurer of the school district, the practice of using the "imprest" fund in excess of $1,000 may not lawfully continue. Such practice was heretofore not in accordance with law in any event. If the "imprest" fund is established in accordance with section 15-29-13, as amended by House Bill No. 1246,

such practice, after July 1, 1971, the effective date of the bill, may be implemented.

3. The school district may, of course, make expenditure directly from the school district treasury as provided by section 15-29-13 if the $1,000 revolving fund is not sufficient. We would further note that a school board may replenish such revolving fund as often as it deems necessary. Therefore, a school board may authorize the president, clerk and treasurer to sign a check to replenish the fund as often as is necessary between board meetings. The superintendent or other person who draws checks on the revolving fund need only report to the board once a month concerning his expenditures from the fund.

4. There is a question as to whether money collected for class rings, etc., is, strictly speaking, school district moneys. If the school district buys the rings from the supplier and resells the ring to the student, it may be argued the money collected is school district money. If the actual contract for the sale of the ring is between the student and the supplier and the school district merely collects the money from the student for remittance to the supplier, the money is not school district money. In such event, it should never have been deposited in a school activity account. It would not appear to be the responsibility or duty of the school board to establish a method of handling such money although any individual connected with the school could assume that function. If he does assume that responsibility, he does so in an individual capacity and the school district would not be responsible for his activities.

The question of whether specific collections collections are school district funds must be determined on a case by case basis. Caps and gowns are ordinarily used at graduation, a school district function, and as such the rental fee may be considered a school district collection if the school district enters into the rental contract with the supplier and then charges the individual student a rental charge. The sale of class rings is not a school district function, and it would not appear the school district would have authority to buy rings for resale to the student. Thus, the answer to this question must depend upon the nature of the funds. If they are school district funds, we believe they must be handled in the same manner as any other school district fund. If they are not school district funds, they should not be mingled with school district funds nor should the school district as such attempt to officially assume any responsibility for same.

I trust this will adequately set forth our position on the matters presented.

HELGI JOHANNESON

Attorney General