

**OPINION
73-387**

April 12, 1973 (OPINION)

Mr. Howard J. Snortland
Assistant Superintendent of
Public Instruction
State Capitol
Bismarck, ND 58501

Dear Mr. Snortland:

This is in reply to your letter of April 5, 1973, relative to Senate Bill 2026 enacted by the recent Legislative Assembly.

You state the following facts and questions:

"We are receiving requests for information about the interpretation of Senate Bill 2026. The requests are from school districts which will get less money combining state, county and local money in 1972-73 with what would be received under Senate Bill 2026.

"To qualify the school districts must be currently levying a 75 percent increase which must be continued under the new law.

"We find no reference to decrease in payments because of a loss in enrollment in section 4 of this bill.

"We respectfully request your opinion on the following question. 'Will the school districts be assured of payments equal to 1972-73 income even though there is a loss in enrollment in the 1973-74 school year?

"The second question deals with eligibility. Section 3 of this bill provides that in order to receive the increased payments under Senate Bill 2026 the district must comply with the provisions of sections 15-41-24 and 15-41-25.

"We also request your opinion as to whether the school district must meet the requirement under section 3 in addition to meeting the requirements of section 4 to be assured that it will receive no less payment than was received in 1972-73."

Section 4 of Senate Bill 2026 amends section 15-40.1-07 of the North Dakota Century Code and provides, insofar as is pertinent, as follows:

"Every high school district shall receive at least as much in total payments as it would have received if it had the highest number of pupils in the next lower category. No high school district shall receive less for general school operating purposes in state and county foundation program payments, personal property replacement funds, and general fund and special levies for current operating expenses for any year of the 1973-1975 biennium than such district received from the

combined total of these sources for general school operating purposes during the 1972-1973 school year, and the superintendent of public instruction shall increase the state payment by such amount as may be necessary to ensure that each high school district receives such amount. Provided, however, that to be eligible for such increased state payments, a high school district must have levied at least a seventy-five percent increase over and above the mill levy limitations provided by law for its general fund for taxable year 1972 and must continue to levy a seventy-five percent increase for its general fund for taxable years 1973 and 1974. No school district shall receive less during the second year of the 1973-1975 biennium than such district received during the first year of such biennium pursuant to the provisions of this section. * * * " (emphasis supplied)

Section 5 of the bill, amending section 15-40.1-08 of the North Dakota Century Code, provides for elementary per-pupil payments and reads in part:

"No school district shall receive less during the second year of the 1973-1975 biennium than such district received during the first year of such biennium pursuant to the provisions of this section."

The payments for both high schools and elementary schools are on a per-pupil basis. In such instance a drop in enrollment would ordinarily result in a reduction of payments, at least on a per-pupil basis. However, the limitations from Senate Bill 2026, quoted above, appear to obviate those results. While it may well have been the intent that the districts should not receive less, on a per-pupil basis, than they received during the 1972-1973, the limitations are not couched in those terms. The limitations appear absolute, i.e., they refer to funds rather than per-pupil payments and the words used must be accorded their ordinary meaning.

It is therefore our opinion that the school districts are assured of payments equal to the 1972-1973 income even though there is a loss in enrollment during the 1973-1974 school year. In speaking of payments we are, of course, referring to all sources of income as stated in the statute.

With respect to your second question, section 3 of the bill, which amends section 15-40.1-06 of the North Dakota Century Code, provides in part:

"School districts operating high schools not meeting the minimum curriculum as provided in section 15-41-24 or the teacher qualifications in section 15-41-25 shall have an educational cost of two hundred twenty dollars, which shall be the basis for calculating grants-in-aid on a per-pupil basis as provided in section 15-40.1-07."

This same provision was included in this section prior to its amendment by Senate Bill 2026. Other school districts operating high schools which meet the requirements use a base of five hundred forty dollars. Therefore, we do not believe a school district which did

meet the requirements under sections 15-41-24 and 15-41-25 in 1972-1973 but does not meet them in the next two years would be entitled to the increased payments since the bill makes no change from the present law in this requirement and we cannot construe the intent of the legislature to permit the use of the higher base in those instances in which the district fails to meet the requirements.

In answer to your second question, it is our opinion that a school district must meet the requirements under section 3 of Senate Bill 2026 in addition to meeting the requirements of section 4 to be assured that it will receive no less payment than was received in 1972-1973.

Sincerely yours,

Allen I. Olson

Attorney General