

**OPINION  
74-374**

August 1, 1974 (OPINION)

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

Dear Mr. Snortland:

This is in reply to your letter of July 23, 1974, relative to eligibility to receive foundation program payments. You state the following facts and questions:

"The North Dakota National Guard is proposing a plan in which a senior high school student during the last semester of his high school career may join the National Guard and request active duty in a work experience career education plan offered at an Army Post outside the State of North Dakota. The student would be absent from his school district the entire last semester.

Sections 15-40.1-07 and 15-40.1-08 list most of the agencies to which foundation program payments are made with two exceptions. Foundation program payments are made to the agency providing the education including payments to school districts in other states. Section 15-59-07 provides that the payment is to be made to the sending district when exceptional children attend private schools. The other exception is for students who are enrolled in one public high school district and take a course or courses of Vocational Education in another high school district.

In the plan proposed by the North Dakota National Guard, the student will be absent from his school district receiving his education at an Army Post outside the State of North Dakota.

We respectfully request your opinion of the following question: Is a school district participating in the North Dakota National Guard proposed plan eligible to receive foundation program payments for students who are being trained in an Army Post outside the State of North Dakota?"

In the letter addressed to you, asking this question, it states:

"The student would retain membership in his local school district and would be granted high school credit for his vocational training from the local school to apply to his graduation. He would return from active duty to graduate with his class."

From such statement we must conclude that the course is not being offered by the school district but the district is giving credit for the courses taken while in the Guard.

Section 15-40.1-07 of the North Dakota Century Code, as amended by Section 4 of Chapter 127 of the 1973 Session Laws, provides for payments to school districts operating high schools "for each high school pupil registered in the schools each year." While the amount of payments due a school district for each pupil registered is computed on a factor based on "average daily membership" in the high school, the actual payment is for pupil registration. Thus the students in question could not be considered for computing the "average daily membership" for the school to determine the State aid factor, since the students are not in membership in the school. However, if the students are "registered in the school" it might appear the school district would be entitled to receive the payments for such students under the above cited statute if they are "registered" in the school.

the term "registered" is not defined by statute and we do not know whether the students in question will be "registered" in the school district. The letter states they will "retain membership" in the local district. We have some serious doubts that a student can be "registered" in school but not be in attendance in that school at all during the semester.

However, the matter is clarified when section 15-40.1-09 of the North Dakota Century Code is considered. This section provides in part: "Such certification shall include an adjustment in the amounts to which the districts and schools are entitled, based upon the difference between payments made under this chapter to such districts and schools for the previous school year as compared to the amount calculated, as provided in section 15-40.1-07 and 15-40.1-08, upon the average daily membership during the previous school year. For purposes of this chapter, 'average daily membership' shall mean the total days all students in a given school are in attendance, including legal school holidays and days set aside for a North Dakota education association convention, plus the total days all students are absent, divided by one hundred eighty days. \* \* \* " (emphasis ours)

Section 15-40.1-09 indicates that the initial payments are based upon the students registered, but the subsequent payments are subsequently adjusted on the basis of "average daily membership" as defined therein. It appears obvious that the students in question are not in "daily membership" if they are at an Army post outside the State of North Dakota. It also appears that the reason the State aid payments, i.e., to assist the school districts in educating students, is not present when the students are not attending classes in the school district during an entire semester.

Since the statutes for State aid payments used average daily membership as a basis for making payments and since the students in question would not be in daily membership in the school district while they are at an Army post outside the State, it is our opinion that a school district participating in the North Dakota National Guard plan would not be eligible to receive foundation program payments for such students during the time they are not in attendance in the district.

Sincerely,

Allen I. Olson

Attorney General