

OPINION
75-146

February 13, 1975 (OPINION)

The Honorable Wayne G. Sanstead
Lieutenant Governor
Office of the Lieutenant Governor
Bismarck, ND 58505

Dear Lieutenant Governor Sanstead:

This is in response to your request for an opinion of this office relative to Senate Bill 2335 which deals with the repeal of Section 15-53.1-37 and 15-53.1-38 of the North Dakota Century Code. You submit the following proposition and questions in your letter:

Mr. Doug Stine, Legislative Intern assigned to Senate Education Committee has on the behalf of that Committee requested that I seek an attorney general's opinion regarding Senate Bill 2335.

The specific question is does Senate Bill 2335 deal retroactively with contracts that have already been formed and are now in effect? And if so, is that Constitutionally permissible?

Initially we would note that said Sections 15-53.1-37 and 15-53.1-38 of the North Dakota Century Code relates to a proportionate tax rate in reorganized school districts and for the alteration of proportionate tax rates. In absence of judicial determination establishing that such statutes are invalid or establishing any particular modification or interpretation of same, we assume that the statutes sought to be repealed by Senate Bill 2335 are valid and binding provisions of law.

We must also note that Chapter 15-53.1 basically sets forth the establishment of proportionate tax rates which are the result of reorganization plans. These plans or agreements presumably consider the determination and adjustment of property, assets, debts and liabilities among the districts (Section 15-53.1-15). These proportionate tax rates are apparently affected or adopted to ensure and establish equity between different areas within the resulting reorganized school district. These plans are initiated by a comprehensive study (Section 15-53.1-14) followed by a public hearing (Section 15-53.1-16) and by subsequent submission to the state committee for approval (Section 15-53.1-17) before presentation to the electorate of the district for approval (Section 15-53.1-22).

The provisions of Sections 15-53.1-37 and 15-53.1-38, when implemented, do not form the basis of a legally binding contract. There are similarities to a contract but, in our opinion, constitutional provisions relating to contracts would probably not be affected by Senate Bill 2335.

Enactment into law of Senate Bill 2335 would retroactively affect existing proportionate tax rates in school districts that have such rates established pursuant to Section 15-53.1-37 and 15-53.1-38.

The plan upon which the reorganization is effected presumably prescribes the tax rates for the entire reorganized district whether on an equal tax rate basis or on a proportionate tax rate structure.

We trust that the foregoing observations, comments, information and expressions will adequately set forth our opinion upon the matter submitted.

Sincerely,

ALLEN I. OLSON

Attorney General