

**OPINION  
75-148**

November 6, 1975 (OPINION)

Honorable M. F. Peterson  
Superintendent of Public Instruction  
State Capitol  
Bismarck, ND 58505

Dear Mr. Peterson:

This is in reply to your letter of November 4, 1975, relative to Section 15-38-04.1 and Section 15-47-33 of the N.D.C.C., both as amended by the 1975 Legislature. You state the school districts are receiving various interpretations regarding these sections. One interpretation is that November 11, Veteran's Day, is a school holiday and there shall be no school. Others are interpreting the sections to mean that in connection with Section 15-47-33 the school district may select three holidays on which there will be no school. Both sections were amended by the same bill, i.e., House Bill 1232, Chapter 149, 1975 S.L.

Section 15-38-04.1, as amended, defines school holidays. It lists Veteran's Day as the eleventh day of November and states in part:

"provided that, if the first day of January, the fourth day of July, the eleventh day of November, or the twenty-fifth day of December falls upon a Sunday, the school holiday shall be the Monday following. Schools shall be in session as usual on all other legal holidays which do not fall upon a Saturday or Sunday, provided that at least one hour shall be devoted to patriotic exercises consistent with the day."

Section 15-47-33, as amended, provides:

"LENGTH OF ELEMENTARY AND SECONDARY SCHOOL YEAR TERM. All elementary and secondary schools in this state shall provide at least one hundred eighty days of classroom instruction during each school term. Any three holidays selected from those listed in subsections 2 through 10 of section 15-38-04.1 which have been decided upon after consultation with the teachers, and any day in which classes cannot be held because of acts of God, epidemic, or failure of physical facilities shall be included in the one hundred eighty days provided for in this section and teachers shall be paid therefor."

Prior to July 1, 1975, Section 15-38-04.1 provided that if January 1, July 4 and December 25, fell upon a Sunday, the school holiday should be the Monday following. It further provided that if any holiday upon which schools were to be closed under that section fell upon a day which would otherwise be a school day, school districts were entitled to foundation aid payments and teachers were entitled to be paid therefor. The section further provided that in communities in which community celebrations were held, school should not be held when so prescribed by the school board on Veteran's Day. The 1975

amendment added the eleventh day of November to the other holidays on which schools were to be closed, deleted the reference to community celebrations on Veteran's Day and deleted the portion relative to foundation aid payments and paying teachers. The latter portion was included with Section 15-47-33 by the bill.

The language of Section 15-38-04.1, quoted above, has been a part of the statute for some time. Under that provision schools were required to be closed on January 1, July 4, and December 25th. The amendment has added November 11 and Veteran's Day to that list but does not alter the requirement that school be closed on those days specified. Thus we believe Section 15-38-04.1 requires schools to be closed on November eleventh.

The determination of which of the three holidays listed in subsections 2 through 10 of Section 15-38-04.1 are to be included within the one hundred eighty days of classroom instruction pursuant to Section 15-47-33 is to be determined by the school board, after consultation with the teachers.

The requirement that schools be closed on the four days specified by Section 15-38-04.1 and the decision as to which three holidays are to be included within the one hundred eighty days requirement of Section 15-47-33 of the N.D.C.C. are separate questions. Veteran's Day may or may not be included within the three days but it does not alter the fact that school must be closed on that day. If three days are chosen which does not include Veteran's Day, then an additional day of school must be held to meet the requirements of Section 15-47-33.

Sincerely,

ALLEN I. OLSON

Attorney General