

**OPINION
79-222**

March 14, 1979 (OPINION)

Mr. Albert J. Hardy

Stark County States Attorney

First National Bank Building

Dickinson, North Dakota 58601

Dear Mr. Hardy:

This is in response to your letter of February 14, 1979 wherein you request our opinion relative to whether the Dickinson Public School District may join an association of oil and gas producing counties. In your letter you set forth the following facts and questions:

We have been requested to secure an Attorney General's Opinion concerning the legality of the Dickinson Public School District joining and paying "dues" to an association of oil and gas producing counties.

We are enclosing for your information a letter from Cleo Furuseth dated October 30, 1978. The letter is quite self-explanatory and it is in the nature of soliciting the Dickinson Public School District to join such an association for the purpose of maintaining the existing revenues the school districts are receiving from oil and gas production taxes. At the time of Mr. Furuseth's initial letter, he submitted for the School District's review a proposed set of bylaws of such an association.

The School District sought and obtained an opinion from Mr. Ward Kirby concerning the legality of joining the association. In response to their request, Mr. Kirby submitted his opinion by letter dated November 27, 1978. We are enclosing a copy of Mr. Kirby's opinion. As a result of this opinion, the Dickinson Public School District advised Mr. Furuseth that, based on the letter opinion, they probably would not be joining the association. As a result of this communication, Mr. Furuseth amended the bylaws by deleting certain references to lobbying activities. I have written in the upper left hand corner the word "amended" on the latter set of amended bylaws.

Would you kindly review the enclosures and provide us with your opinion as to the legality of Dickinson Public School District in joining and paying dues to such an association.

You enclose with your letter a copy of the bylaws of the Association of Oil and Gas Producing Counties (hereinafter "Association"), a copy of a letter addressed to the Dickinson Public School District from Mr. Ward M. Kirby, and a copy of an "agreement for joint exercise of governmental powers".

It does not appear that the bylaws of the Association define the purposes of the Association, as the bylaws appear primarily to be concerned with such things as membership in the Association, meetings, the establishment of a board of directors, election of officers, appointment of committees, deposit of funds, etc. It appears from the documents you have provided us that the purposes of the Association are in fact spelled out in the "agreement for joint exercise of governmental powers". As amended, this document provides that the signatories to the agreement agree to exercise "their powers" for the following purposes:

- A. To provide a medium for the exchange of ideas, information and experience regarding the problems associated with the impact of oil and gas development and its solutions.
- B. To facilitate cooperation between these different levels of government.
- * * *
- D. To engage in such other activities that will help achieve more effective handling of the impact caused by oil and gas development.
- E. To gather and distribute statistical information relating to oil and gas development and its resulting impact.
- F. To unify the efforts of governmental subdivisions to effect these purposes.

The agreement then goes on to reference the existence of the Association.

While we have in the past said as a general proposition that any action which one governmental unit or political subdivision may take, another unit or subdivision may be empowered to take through the joint exercise of governmental powers granted pursuant to North Dakota Century Code Chapter 54-40, we have drawn a distinction in the past between the powers which an association of various units of government could exercise, and the legal authority to join and pay dues to such an association in the first place. We enclose for your review a letter written by this office to Mr. John E. Jacobson, Mercer County states attorney, on February 9, 1977, concerning a similar matter. In that letter we responded to the question of whether counties, cities, and school districts in a four-county area could form an association and expend tax funds for a variety of purposes, similar to those outlined in the agreement which you have sent us, by which certain political subdivisions would protect their interests in industrialization resulting primarily from coal development. In that letter we pointed out that the Legislative Assembly had found it necessary in several instances to specifically authorize participation by counties and school districts in various associations, and concluded that the legality of membership in an association of coal producing counties was therefore questionable. We have reached a similar conclusion with respect to the authority of counties to join and pay dues to county associations other than those specifically authorized by statute. We enclose for your information

and review a copy of a letter dated October 20, 1977, addressed to Mr. Q. R. Schulte, Mountrail County states attorney on this subject.

In a letter from this office to Mr. M. F. Peterson, former state superintendent of public instruction, dated February 18, 1972, a copy of which is also enclosed, similar reasoning was applied to the authority of school districts to join education associations. In that letter we concluded that inasmuch as school districts are a creature of statute and have only so much authority as is granted by the Legislature, the authority of school districts to join the North Dakota High School Athletic Association was in question, as no such specific authority had been granted to school districts, even though a statute authorized those districts already members of the Association to purchase insurance contracts. See, N.D.C.C. 15-47-31. Subsequent to our opinion the Legislative Assembly adopted subsection 20 of Section 15-29-08, which subsection authorized any public school to become a member of the North Dakota High School Athletic Association. We believe this action to be a strong indication that the Legislative Assembly intends that school districts be empowered to organize on a state level only as specifically provided by law. See, *Hughes v. State Farm Mutual Automobile Insurance Company*, 236 N.W.2d. 870, 876 (N.D. 1975). As we pointed out in our letter of February 18, 1972, the rule of strict construction applies in defining the authority of school boards, and if there is any reasonable question as to the authority of a board, it must be resolved against the board. *Myhre v. School Board of North Central Public School District No. 10, Richland County*, 122 N.W.2d. 816 (N.D. 1963); *Seher v. Woodland School District No. 26 of Kidder County*, 79 N.D. 818, 59 N.W.2d. 805 (1953).

There are currently only two provisions in state law authorizing school districts to join associations, both contained in North Dakota Century Code 15-29-08. This section provides in pertinent part as follows:

15-29-08. GENERAL POWERS AND DUTIES OF SCHOOL BOARD. - The powers and duties of the school board of a public school district shall be as follows:

* * *

9. The legislative assembly hereby recognizes the necessity for school boards to organize on the county and state levels, and the legislative assembly hereby authorizes local school boards to pay membership dues to county and state associations and further authorizes county associations to pay membership dues to the state association.
0. Recognizing the necessity for an organization of schools to administer a program of inter-scholastic activities, any public school, so classified by the state department of public instruction, is authorized to become a member of the North Dakota high school activities association, presently located in the city of Valley City, North Dakota, upon written application of its school board and said school board shall pay the cost of such membership out of the

funds of such school in the same manner as any valid school expense is paid.

* * *

Subsection 20 is clearly inapplicable, and subsection 19 authorizes school boards to join only county associations of school boards and for the county associations to join a state association. Regardless of the purposes for which these associations may be formed, it is clear that the county association which school boards are authorized by Section 15-29-08 to join is an association of school boards only. This section thus cannot be construed to allow a school board to join an association made up of school boards, counties, cities and other political subdivisions or to pay dues to such an organization, as would apparently be required by Article X of the bylaws of the Associations, which you enclose. If any authority exists for a school board to join the Association of Oil and Gas Producing Counties and to pay dues to the Association, such authority must be found elsewhere in the law.

We do note that Section 54-40-08 authorizes "agreements . . . for joint or cooperative action" between political subdivisions and authorizes them to "expend funds . . . pursuant to such agreement". You have not asked and we therefore offer no opinion on whether this section might be sufficient authority for the political subdivisions to agree to jointly undertake those acts set forth in the agreement for joint exercise of governmental powers, such being dependent upon whether these functions are authorized for any one or more of the political subdivisions individually. We do not believe, however, that Section 54-40-08 may serve as authority in itself for the school board to join and pay dues to the Association of Oil and Gas Producing Counties. In light of the attitude taken by the Legislative Assembly in authorizing membership by school boards in only specific types of associations we do not believe that an authorization for virtually any type of an association may be found in the authority for boards to make "agreements" contained in Section 54-40-08.

On the basis of the foregoing it is considered that while there are no North Dakota court cases directly in point, legal authority is lacking for the Dickinson Public School District to participate in the Association of Oil and Gas Producing Counties.

We trust that the foregoing will prove of assistance to you.

Sincerely,

ALLEN I. OLSON

Attorney General