

Date Issued: April 6, 1981 (AGO 81-37)

Requested by: Arne F. Boyum, Rolette County State's Attorney

- QUESTION PRESENTED -

Whether a school district is authorized to become custodian of the school district's building fund.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that a school district is authorized to become custodian of the school district's building fund.

- ANALYSIS -

Section 57-15-17(1)(c) of the North Dakota Century Code, concerning disposition of the building fund tax, states as follows:

Such funds shall be paid out by the custodian thereof only upon order of the school board, signed by the president and the clerk of said school district, and such order must recite upon its face the purpose for which such payment is made.

This section does not state who can be the custodian of a school district's building fund. However, section 57-15-17(1)(a), N.D.C.C., does provide that the school building fund "shall be deposited, held, or invested in the same manner as the sinking funds of such school district . . ." (Emphasis supplied).

Section 21-03-40, N.D.C.C., states as follows:

21-03-40. SINKING FUNDS - CUSTODIAN. The county treasurer shall be custodian of each sinking fund for the payment of bonds issued by each taxing district within the county except in case of any city or park district which upon the passage of a resolution by the school board chooses to have its clerk be custodian of such sinking fund. In the case of any city or park district having a population of more than one thousand, or a school district approving a resolution as provided in this section, the city auditor, park district treasurer, or school district clerk of the respective city, park district, or school district shall be custodian of each of its sinking funds.

This section provides that a school district, if it passes a resolution, can have its clerk be the custodian of the sinking fund. Pursuant to section 15-29-09(12), N.D.C.C., the clerk is to have custody of funds that a school board is authorized to receive. Therefore, since a school district clerk can be custodian of sinking funds pursuant to section 21-03-40, N.D.C.C., and since a building fund can be "held" like a sinking fund pursuant to section

57-15-17(1)(a), N.D.C.C., the school district, through its clerk, can be the custodian of its building fund.

We have recognized in a previous letter that a school district can be the custodian of its building fund. On June 4, 1970, in a letter to the clerk of the Scranton School District, we stated as follows:

You do not state whether the county treasurer or the school district treasurer is the custodian of sinking funds and hence the building fund. The county treasurer is the custodian unless the school district passes a resolution to have its treasurer be custodian of the funds. . . .

Although this letter dealt with the question of proper investment of the school building fund, it does indicate that the school district treasurer can be the custodian of the funds. A school district clerk has now replaced the school district treasurer.

- EFFECT -

This opinion is issued pursuant to section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the question presented is decided by the courts.

ROBERT O. WEFALD
Attorney General

Prepared by: Dick D. Johnson
Assistant Attorney General