

Date Issued: May 15, 1981 (AGO 81-46)

Requested by: Elmer Huber, Deputy Superintendent, Department of Public Instruction

- QUESTION PRESENTED -

Whether the state Superintendent of Public Instruction has the authority to assign to county superintendents of schools the duty of assisting the Department of Public Instruction in the operation and inspection of school lunch programs.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that the state Superintendent of Public Instruction has the authority to assign to county superintendents of schools the duty of assisting the Department of Public Instruction in the operation and inspection of school lunch programs.

- ANALYSIS -

Section 15-54-03 of the North Dakota Century Code gives the state Department of Public Instruction, which is the "state educational agency," defined in section 15-54-01(4), N.D.C.C., broad authority in the administration of school lunch programs. It provides, in part:

15-54-03. ADMINISTRATION OF PROGRAM. The state educational agency may enter into such agreements with any agency of the federal government, with any school board, or with any other agency or person, prescribe such regulations, employ such personnel, and take such other action as it may deem necessary to provide for the establishment, maintenance, operation, and expansion of any school lunch program, and to direct the disbursement of federal funds, in accordance with any applicable provisions of federal or state law. . . .

This section allows the state educational agency to take whatever action is necessary to provide for the operation of school lunch programs.

Section 15-54-05, N.D.C.C., requires the state educational agency to conduct or cause to be conducted audits and inspections of the accounts, records, and operations of school lunch programs. This section states:

15-54-05. ACCOUNTS, RECORDS, REPORTS, AND OPERATIONS. The state educational agency shall prescribe regulations for the keeping of accounts, and records and the making of reports by or under the supervision of school boards. Such accounts and records at all times shall be available for inspection and audit by authorized officials and shall be preserved for such period of time, not in excess of five years, as the state educational agency lawfully may prescribe. The state educational agency shall conduct or cause to be conducted such audits, inspections, and administrative

reviews of accounts, records, and operations with respect to school lunch programs as may be necessary to determine whether its agreements with school boards and regulations made pursuant to this chapter are being complied with, and to ensure that school lunch programs are effectively administered. (Emphasis supplied).

The section allows the state educational agency to delegate or to arrange for any other agency or person to conduct audits and inspections of the accounts, records and operations of school lunch programs.

Section 15-22-11, N.D.C.C., states that "the county superintendent of schools shall carry into effect all lawful instructions of the superintendent of public instruction . . ." and section 15-22-12, N.D.C.C., provides:

15-22-12. INSPECTION OF SCHOOL DISTRICTS RECORDS. The county superintendent of schools shall visit the officers of the several school districts in his county as often as may be necessary to enforce a correct method of keeping the district records. The county superintendent may require school officers to meet with him at such times and places as he may designate for the purpose of inspecting the district records, instructing the officers in the manner of keeping such records, and preparing reports of district officers.

Further, section 15-22-18, N.D.C.C., states, in part:

15-22-18. REPORT TO SUPERINTENDENT OF PUBLIC INSTRUCTION - CONTENTS. On or before the fifteenth day of September in each year, the county superintendent of schools shall make and transmit to the superintendent of public instruction a report containing such statistics, items, and statements relative to the schools of the county as the superintendent may require. . . .

Therefore, the department of public instruction may assign to county superintendents of schools the duties of establishing, maintaining, operating, and expanding school lunch programs and the duties of auditing, inspecting, and reviewing the accounts, records and operations of school lunch programs.

- 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.

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