

Date Issued: January 21, 1983 (AGO 83-3)

Requested by: Ronald C. Stastney, Assistant Superintendent  
Department of Public Instruction

- QUESTION PRESENTED -

Whether the Superintendent of Public Instruction has the legal authority to set the length of schooldays for North Dakota school districts?

- ATTORNEY GENERAL'S OPINION -

It is my opinion that the Superintendent of Public Instruction does have the legal authority to set the length of schooldays for North Dakota school districts.

- ANALYSIS -

Section 15-47-33 of the North Dakota Century Code requires all elementary and secondary schools in the state to provide at least "one hundred eighty days of classroom instruction" in each school term. A "school year," "month," and "week" are defined by section 15-47-04, N.D.C.C. While section 15-47-04, N.D.C.C., defines school "week" as consisting of five "days," "days" is not defined.

The Superintendent of Public Instruction has general supervision of the common and secondary schools of the state (section 15-21-04, N.D.C.C.) although the particular control and supervision is in the local school boards. Section 15-29-07, N.D.C.C. Section 15-21-09, N.D.C.C., authorizes the Superintendent to have charge and supervision of the "standardization of schools." Section 15-41-02, N.D.C.C., states the Superintendent has the general supervision over secondary education. By the authority given the Superintendent in section 15-21-07, N.D.C.C., the Superintendent is to give written answers to questions concerning school laws. Presumably, one reason for this section is to provide for some uniformity in the educational system. Such uniformity is even a constitutional requirement in this state in the sense that the Legislature must provide for a "uniform system" of free public schools. Article VIII, Section 2, of the North Dakota Constitution.

The prescribed powers of the Superintendent of Public Instruction as set forth by the Legislature have as a basic purpose providing for the uniformity of the school system. The minimum number of hours to constitute a day is a necessary component of the requirement of one hundred eighty days of instruction. If it were not, then a school district could set three hours a day as constituting a day and meet the one hundred eighty-day requirement. Such result is contrary to logic and to the welfare of North Dakota students.

Generally, state officers have such powers as have been delegated to them by express statutory provision, or as may be properly implied from the nature of the particular duties imposed on them. 81A C.J.S. States Section 120 (1977). It is necessarily implied from

the statutes cited above that the Superintendent of Public Instruction has the authority to make an administrative determination as to what constitutes a legal "day" for classroom instruction purposes.

- 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, or the applicable provisions of law are amended or repealed.

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