

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 88-13

Date issued: April 5, 1988

Requested by: Steven L. Vogelpohl, Lincoln City Attorney

- QUESTION PRESENTED -

Whether a city which levies a tax pursuant to N. D. C. C. ' 57-15-55.1 for transportation fees authorized by N. D. C. C. ' 15-34.2-06.1 and charged by a school district can pay to the school district an amount which exceeds the difference between the state transportation payment and the school district's actual cost for transporting the city's school children.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that a city which levies a tax pursuant to N. D. C. C. ' 57-15-55.1 for transportation fees authorized by N. D. C. C. ' 15-34.2-06.1 and charged by a school district cannot pay to the school district an amount which exceeds the difference between the state transportation payment and the school district's actual cost for transporting the city's school children.

- ANALYSIS -

N. D. C. C. ' 57-15-55.1 provides:

57-15-55.1. City tax levy for transportation of public school students. The governing body of any city, upon approval by a majority vote of the electors of the city at any citywide election, may annually levy a tax on the taxable valuation of property within the city to provide funds for fees charged by a school district pursuant to section 15-34.2-06.1 for transportation for public school students who reside in the city but who attend school in another city in the same school district.

A city levying a tax pursuant to this section may levy only so much as will be required to provide an amount representing the difference between the estimated state transportation payment to be received by the school district on behalf of students residing in the city but attending school outside of the city and the estimated actual cost to be incurred by the district in providing transportation for those students.

(Emphasis supplied.)

The school district charges a city pursuant to N. D. C. C. ' 15-34.2-06.1 which provides as follows:

15-34.2-06.1. Charge for bus transportation optional. The school board of any school district which has not been reorganized may charge a fee for school bus service provided to anyone riding on buses provided by the school district.
. . . For school bus service started on or after July 1, 1981, the

total fees collected may not exceed an amount equal to the difference between the state transportation payment and the local school district's cost for transportation during the preceding school year. Any districts that have not previously provided transportation for pupils may establish charges based on costs estimated by the school board during the first year that transportation is provided.

(Emphasis supplied.)

In the factual situation presented in this request, the school district charges the city the total that it would have charged the individual parents for their children's transportation less a discount for the administrative convenience of sending and processing only one bill for collection. The district determines the cost per student by dividing the expected number of passengers into the total net cost district wide for the previous year, and then makes a practical judgment on how much it will actually charge per student which generally means reducing this pro rata amount. The instant problem was created when this method resulted in an apparent "net gain" to the school district from the city's students.

An actual example best illustrates the "net gain" problem. This example is from the actual division of costs submitted by the school district:

<u>Expenditures</u>	<u>1987</u>
Harlow Busing Service	\$77,294
Administrative Overhead	<u>9,105</u>
Total Expenditures	\$86,399
<u>Revenues</u>	
State Transportation Aid	\$43,737
Patron Fees (5% disc.)	<u>49,542</u>
Total Revenues	\$93,279
NET GAIN	\$ 6,880

The "net gain" is created because while the school district pays the contractor on a per mile basis it collects from parents on an average cost per student basis. The result is that the school district makes up some of its overall loss on the total contract from the charges that it bills to the city even though the district might also be incurring an actual loss on the city route.

A city official cannot withdraw from a fund any more than is lawful. N. D. C. C. ' 57-15-58. N. D. C. C. ' 57-15-55.1 clearly provides that the limit for a city on making levies for the fund is the school district's cost for providing

transportation "for those students" (i.e., the city's students). Since there is no other statutory authority providing a fund or funds for a city to pay school bus transportation charges, a city cannot pay more to a school district after subtracting the state transportation payment than the cost for providing transportation for its own students. This is so even though a school district might be able to bill more because it is limited only by N.D.C.C. ' 15-34.2-06.1 providing that the total fees collected cannot exceed the reimbursement/cost differential. Thus, the city has no authority to pay a "net gain".

A school district, however, has a certain amount of discretion in how it determines its "costs". There is no prohibition in the school district bidding a city route separately, for example. Such a separation could result in higher costs to the city. Such higher costs would, then, be part of a lawful charge. In this case, since the school district has not chosen to do that, the characterization of "net gain" results in the city being unable to reimburse that amount from the levy pursuant to N.D.C.C. ' 57-15-55.1.

The term "costs" in N.D.C.C. ' 57-15-55.1 is not defined nor is the term "costs" defined in N.D.C.C. ' 15-34.2-06.1. The definition may vary somewhat among school districts. Obviously, the busing contract price, rules of the Department of Public Instruction (e.g., the North Dakota Financial Accounting Handbook for Local Education Agencies), and normally accepted accounting principles would all be relevant in determining what was meant by "costs" or "actual costs".

- EFFECT -

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

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Attorney General

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