

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 90-10

Date issued: March 29, 1990
Requested by: Representative Dan Ulmer
District 34

- QUESTIONS PRESENTED -

I.

Whether the Superintendent of Public Instruction has the authority to make cuts solely from transportation aid payments for elementary and secondary education if the moneys in the state general fund are insufficient to make all payments.

II.

Whether the state and federal constitutions require North Dakota to provide transportation to elementary and secondary students.

- ATTORNEY GENERAL'S OPINION -

I.

It is my opinion that the Superintendent of Public Instruction does not have the authority to cut solely from transportation aid payments for elementary and secondary education if the moneys in the state general fund are insufficient to make all payments.

II.

It is my opinion that the state and federal constitutions do not require North Dakota to provide transportation to elementary and secondary students.

- ANALYSES -

I.

On December 5, 1989, the people of North Dakota rejected eight referred measures. Three of the measures were tax measures. As a result, across-the-board cuts have been made to balance the state's budget. Two areas of state government affected by the budget cuts are elementary and secondary education.

N. D. C. C. ' 15-40.1-16 provides that school districts in North Dakota shall be

paid funds for transporting students. The payments vary in amount based on whether the student lives within or without city limits and the vehicle's capacity.

N. D. C. C. ' 15-40.1-11 provides:

Fractional payments. Should the moneys in the state general fund be insufficient to make all payments, the payments to the various school districts or schools shall be prorated by the superintendent of public instruction on a fractional basis. When fractional payments are made, additional payments may be made from time to time as sufficient moneys come into each fund, so as to make full payments under this chapter. If the appropriation made by the legislative assembly is inadequate to meet all claims against such appropriation and is thus the cause of the insufficiency, such prorated fractional payments made pursuant to this section shall constitute payment in full.

(emphasis supplied).

The payments to the various school districts referred to in N. D. C. C. ' 15-40.1-11 include both educational support per pupil and transportation aid payments. When the moneys in the state general fund are insufficient to make both the educational support per pupil and transportation aid payments, both payments shall be "prorated by the superintendent . . . on a fractional basis."

In analyzing a statute, the words and phrases used should be considered in their relation to each other and according to the rules of grammar. Anderson v. Peterson, 54 N. W. 2d 542, 551-52 (N. D. 1952). To "prorate" means to divide, share, or distribute proportionately. Black's Law Dictionary 1099 (5th Ed. 1979). Thus, if the moneys in the state general fund are insufficient to make all of the educational support per pupil and transportation aid payments, both payments shall be reduced proportionately. A proportional reduction is accomplished when the percentage of the available funds for each type of payment remains constant both before and after the reduction. For example, if the educational support per pupil payment constitutes eighty percent and the transportation aid payment constitutes twenty percent of the total grants foundation aid payment; after the reduction is made the educational support per pupil payment should constitute eighty percent and the transportation aid payment twenty percent, of the total funds available for foundation aid grants.

Pursuant to N. D. C. C. ' 15-40.1-11, when the moneys in the general fund are insufficient to make all payments for educational support per pupil and transportation aid, the superintendent is required to make cuts proportionately. Therefore, it is my opinion that the Superintendent of Public Instruction does not have authority to make cuts solely from transportation aid payments for elementary and secondary education.

II.

Neither the state nor the federal constitution requires the state to provide transportation for elementary and secondary students. See Kadrmas v.

Dickinson Public Schools, 402 N.W.2d 897 (N.D. 1987), aff'd, 108 S. Ct. 2481 (1988).

N. D. C. C. ' 15-34.2-06.1 provides limited authority for school districts to charge a fee for school bus service. The Kadrmas family argued that N. D. C. C. ' 15-34.2-06.1 unconstitutionally authorized fee charges for school bus service in violation of N. D. Const. art. VIII, ' 2, which requires the Legislature to provide for a uniform system of free public schools.

The North Dakota Supreme Court rejected the Kadrmas family's claim and held that N. D. Const. art. VIII, ' 2 does not require the state or school districts to provide free transportation for students to and from school. 402 N.W.2d at 902. Although the court recognized the Kadrmas family's assertion that a child must reach the schoolhouse door to receive the free education, the court concluded:

In our view transportation is not a necessary element of the educational process, and it is not an integral part of the educational system to which the constitution refers in requiring the Legislature to provide a uniform system of free public schools. Although transportation may be an important prerequisite to accepting the educational opportunities offered in the public school system it is not part of the system. Other important prerequisites to participating in the educational opportunity offered by the public school system might include good nutrition and proper immunizations. As in the case of school transportation, the state may wish to participate in the providing of such prerequisites, but art. VIII, ' 2, N. D. Const., does not mandate that it do so.

Id. at 901-02.

Upon appeal the United States Supreme Court held that the United States Constitution does not require North Dakota to provide school bus services. Kadrmas v. Dickinson Public Schools, 108 S. Ct. 2481, 2489 (1988). The Court stated:

We think it is quite clear that a State's decision to allow local school boards the option of charging patrons a user fee for bus service is constitutionally permissible. The Constitution does not require that such service be provided at all, and it is difficult to imagine why choosing to offer the service should entail a Constitutional obligation to offer it for free.

Id. at 2489.

The Kadrmas decisions held that neither the state nor the federal constitutions provide a right to school bus service. Therefore, it is my opinion that the state and federal constitutions do not require North Dakota to provide transportation to elementary and secondary students.

- 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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