

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 90-17

Date issued: August 16, 1990

Requested by: David M Crane, Hettinger County State's Attorney

- QUESTION PRESENTED -

Whether a school district's official newspaper must satisfy the requirements of N. D. C. C. ' 46-05-01.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that a school district's official newspaper need not satisfy the requirements of N. D. C. C. ' 46-05-01.

- ANALYSIS -

N. D. C. C. ' 46-05-01 sets forth qualifications that a newspaper must satisfy before publishing any legal notice or matter required by law to be printed in a North Dakota newspaper. Those requirements are as follows:

1. The newspaper must have had a regular and continuing circulation for at least one year with a subscription list of at least 150 regular subscribers;
2. The newspaper must be "nonsectarian and printed at least three-fourths in English"; and
3. The newspaper must have had been admitted to the United States mail and have complied with the requirements of federal laws governing second class mail for at least one year.

At its annual meeting a school board is authorized to designate, a newspaper of general circulation in that district as the official newspaper of the school district. N. D. C. C. ' 15-29-08(25). Whether the requirements of N. D. C. C. ' 46-05-01 must be met is not discussed.

When a general provision in a statute conflicts with a special provision of the same or another statute, the two statutes must be construed if possible to give effect to both provisions. N. D. C. C. ' 1-02-07. If the conflict between the two is irreconcilable, the particular statute controls over the general statute unless the legislature intends the general statute to prevail.

N. D. C. C. ' 46-05-01 provides requirements for all newspapers publishing legal notices or matters required by law to be published in a newspaper. N. D. C. C. ' 15-29-08(25) refers specifically to a school district's official newspaper. It is possible to reconcile both of the statutes by assuming the legislature intended a school district's official newspaper to satisfy the requirements of N. D. C. C. ' 46-05-01. As will be seen later in this analysis, however, that is not the legislative intent. Thus, effect is not given to both provisions. Applying the rule of N. D. C. C. ' 1-02-07, the specific provision (N. D. C. C. ' 15-29-08(25)) must prevail and be construed as an exception to the general provision (N. D. C. C. ' 46-05-01). Support for this conclusion can be found in the legislative history surrounding the enactment of N. D. C. C. ' 15-29-08(25).

In the 1989 Legislative Session, House Bill No. 1477 was introduced to resolve a problem experienced by school boards across the state in publishing school board activities. Statutes differed in describing the correct newspaper to publish school board business. For example, prior to the 1989 amendments, N. D. C. C. ' 15-28-06 required notices of annual and special school board elections to be published in the county's official newspaper. N. D. C. C. ' 15-28-11, on the other hand, required school board proceedings to be published in the newspaper of general circulation in the school district. Finally, N. D. C. C. ' 15-34.2-07.1 required school transportation and fuel contract bid notices to be published in a legal newspaper of wide circulation within the school district.

To resolve the inconsistencies among the statutes in determining which newspaper was to publish a school board's business activities, House Bill No. 1477 added a new subsection (which became subsection 25) to N. D. C. C. ' 15-29-08. The new subsection allows a school district to designate a newspaper of general circulation in the school district as the official newspaper of the school district at the annual meeting. House Bill No. 1477 also amended other relevant statutes to require newspaper publishing to occur in that school district's official newspaper and deleted references to other newspapers. 1989 N. D. Sess. Laws ch. 209.

Representative Myrdal was a primary sponsor of House Bill No. 1477. In appearing before the House Education Committee in support of the bill, Representative Myrdal stated the bill gave the school district full discretion to select an official newspaper where all school business notices could be found. She then stated:

This does not preclude any special newspaper. It may be the county newspaper. It may be the top newspaper published in the town in which the school is located. And I think the local school boards are aware of the needs and reading habits of the patrons in their districts and would be qualified to make this selection. This is basically what this bill seems to do.

Hearing on H. 1477 Before the House Comm. on Education, 51st N. D. Leg. (January 31, 1989) (Statement of Rep. Myrdal).

Similarly, Representative Myrdal testified before the Senate Education Committee on how the bill would affect her own district.

In our district, there are seven newspapers - small newspapers. And so you might choose as a school board the one that you think would make this information most accessible to the people in your district.

Hearing on H. 1477 Before the Senate Comm. on Education, 51st N.D. Leg. (February 22, 1989) (Statement of Rep. Myrdal). In testimony before both education committees, the requirements of N.D.C.C. '46-05-01 were not mentioned. Instead, Representative Myrdal testified that the school boards had full discretion to select the district's official newspaper based upon the needs and reading habits of the patrons of that district.

This legislative history reveals that a school district is not compelled to select as its official newspaper a newspaper which satisfies statutory requirements generally applicable to a legal newspaper. Thus, it is not the Legislature's intent that a school board's selection of an official newspaper must comply with the requirements of N.D.C.C. '46-05-01. The primary goal in the interpretation of statutes is to fulfill the objective and intent of the legislature. Larson v. Wells County Water Resource Board, 385 N.W.2d 480 (N.D. 1986). It is therefore my opinion that the Legislature intended to permit a school district to select a newspaper which does not satisfy the requirements of N.D.C.C. '46-05-01 as the official newspaper.

A December 9, 1980, letter opinion to Bottineau County State's Attorney A.S. Benson by Assistant Attorney General Lynn Erickson, which concluded that a school board's official newspaper must comply with the requirements of N.D.C.C. '46-05-01, is hereby overruled on the basis that intervening 1989 legislation has resulted in a contrary conclusion.

- 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

ATTORNEY GENERAL' S OPINION 90-17  
August 16, 1990  
Page 4

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