

STATE OF NORTH DAKOTA

ATTORNEY GENERAL' S OPINION 90-19

Date issued: September 5, 1990

Requested by: Robert G. Hoy, Cass County State's Attorney

- QUESTIONS PRESENTED -

I.

Whether a school district may charge an admission fee to cover part of its operating costs for extracurricular and noncurricular activities, such as athletics, when attendance at the activities is voluntary.

II.

Whether a school district may charge a participation fee, on a pro-rata basis, to those students who actually participate in the extracurricular or noncurricular activity to recover the cost of the extracurricular or noncurricular activity.

- ATTORNEY GENERAL' S OPINION -

I.

It is my opinion that a school district may charge a student a fee for attendance at extracurricular or noncurricular activities, such as athletics, when attendance at such activities is voluntary and the student desires to attend the activities.

II.

It is my further opinion that a school district may charge a student a fee for participating in an extracurricular or noncurricular activity.

- ANALYSES -

I.

N. D. Const. art. VIII, ' 2 states:

[t]he legislative assembly shall provide for a uniform system of free public schools throughout the state, beginning with the primary and extending through all grades up to and including schools of higher education, except that the legislative assembly may authorizetuition, fees and service charges to assist in the financing of public schools of higher education. "

In addition, N. D. C. C. ' 15-47-01 provides, in part, that "the public schools of the state shall be equally free, open, and accessible at all times to all children between the ages of six and twenty-one." N. D. C. C. ' 15-29-08 provides that the school board of a public school district shall have the power and duty "[t]o establish for all children of legal school age residing within the district, a system of free public schools which shall furnish school privileges equally and equitably."

In 1978, the North Dakota Supreme Court held that N. D. C. C. " 15-43-07 through 15-43-10 and 15-43-12, which authorized public school districts to charge fees for the use of textbooks, were unconstitutional as applied to elementary school textbooks. Cardiff v. Bismarck Pub. School Dist., 263 N. W. 2d 105, 113-14 (N. D. 1978). In response to Cardiff, the 1979 Legislative Assembly passed H. B. 1057, which prohibited public school districts from charging fees for textbooks or workbooks. 1979 N. D. Sess. Laws ch. 247, ' 1 (codified at N. D. C. C. ' 15-43-11.1(1)). In addition to prohibiting public school districts from charging fees for textbooks and workbooks, H. B. 1057 also states: "[n]o school board shall sell textbooks nor otherwise charge fees to pupils except as provided by law." 1979 N. D. Sess. Laws ch. 247, ' 1 (codified at N. D. C. C. ' 15-43-11.1(1)).

H. B. 1057 also gave public school districts the authority to charge students specified fees. 1979 N. D. Sess. Laws ch. 247, ' 2 (codified at N. D. C. C. ' 15-43-11.2). This statute has not been amended since it was enacted in 1979. It provides, in pertinent part, as follows:

15-43-11.2. Authorized fees. A school board is authorized to require payment of the following fees:

. . .

2. Admission fees or charges for extracurricular or noncurricular activities where attendance is optional.

N. D. C. C. ' 15-43-11.2.

N. D. C. C. ' 15-43-11.2 authorizes a public school district to charge students admission fees for extracurricular or noncurricular activities when attendance at those activities is optional. In 1981, this office issued an opinion that stated N. D. C. C. ' 15-43-11.2 does not permit a school district to require every student to purchase a season ticket for extracurricular activities. 1981 N. D. Op. Att'y Gen. 81-109. The opinion stated that "it is the Attorney General's opinion that the legislature intended to authorize these admission fees or charges only in those instances where the student actually attended the extracurricular or noncurricular activity." Id. The opinion further stated: "if attendance at the extracurricular or noncurricular activity is optional and the student desires to attend that activity, then a mandatory fee may be charged. However, a mandatory activity fee charged to a student

whether or not that student desires to attend the activity is impermissible." Id. (Emphasis in original.)

The 1981 opinion continues to constitute the opinion of the Attorney General. Thus, it is my opinion that a school district may require a student to pay an admission fee for extracurricular or noncurricular activities, such as athletics, when attendance at the activities is voluntary and the student desires to attend the activities.

II.

N. D. C. C. ' 15-43-11.2(2) authorizes a public school district to charge students "[a]dmission fees or charges for extracurricular or noncurricular activities where attendance is optional." (Emphasis added.)

I must assume that the Legislative Assembly made a deliberate choice of words that expressed its intention when it used the phrase "[a]dmission fees or charges for extracurricular or noncurricular activities." (Emphasis added.) See Cardiff v. Bismarck Public School District, 263 N.W.2d at 113 (court must assume that the framers of the constitution made a deliberate choice of words that reflected or expressed their thoughts). That the Legislative Assembly intended to authorize public school districts to charge fees for extracurricular or noncurricular activities, is implicit in the fact both the terms "admission fees" and "charges" were used to modify "extracurricular or noncurricular activities." It is therefore my opinion that N. D. C. C. ' 15-43-11.2 permits a public school district to charge students fees to participate in extracurricular or noncurricular activities when participation is optional and the student chooses to participate.

The ability to charge participation fees is not unlimited. N. D. C. C. ' 15-43-11.1(1) prohibits public school districts from charging students except as provided by law. Fees charged under N. D. C. C. ' 15-43-11.2(2) are limited to those activities which are "extracurricular or noncurricular." What constitutes extracurricular or noncurricular activities is a fact question. There are several standards that are helpful in properly applying the legal test. A school generally may not charge a fee for a course for which credit is given. Nor may a school charge for education, regardless of whether credit is given, that is a core subject. I am hopeful that school districts will observe not only the letter but the spirit of the constitution in making the decision on this issue. I recognize that many have acute funding shortages, but the state constitution provides no emergency exceptions to its dictate of a free public school education.

- 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 questions presented are

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decided by the courts.

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