

LETTER OPINION
93-L-283

October 5, 1993

Honorable Moine R. Gates
State Representative
1724 Drees Drive
Grand Forks, ND 58201

Dear Representative Gates:

Thank you for your letter inquiring as to the responsibility of the Department of Public Instruction to support locally elected school boards and the role of this office in representing the interests of local school districts.

The Department of Public Instruction is the office of, and is headed by, the Superintendent of Public Instruction. N.D.C.C. ? 15-21-01.1. The Superintendent of Public Instruction is a constitutional officer whose duties are prescribed by the Legislature. See Article V, Sections 12 and 13 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" as required by Article VIII, Section 2 of the North Dakota Constitution. Letter from Attorney General Robert Wefald to Ronald Stastney (January 21, 1983). The Superintendent of Public Instruction is charged with the general supervision of the common and secondary schools in the state, N.D.C.C. ? 15-21-04, whereas the local control and supervision rests with the local school boards. N.D.C.C. ? 15-29-07.

In your letter you cite N.D.C.C. ? 15-21-07 and ask whether this statutory provision establishes an exclusive and primary service responsibility on the part of the Department of Public Instruction to provide support for locally elected school boards. N.D.C.C. ? 15-21-07 provides that "[t]he

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superintendent of public instruction shall counsel with and advise county superintendents of schools and school boards upon all matters involving the welfare of schools, and on request, he shall give them written answers to all questions concerning school laws." This office has previously noted that one reason for this provision presumably is to provide for some uniformity in the school system. Letter from Attorney General Robert Wefald to Ronald Stastney (January 21, 1983). However, nothing in N.D.C.C. ? 15-21-07 or any other statutory provision provides that the Department of Public Instruction's exclusive or primary duty is to foster or promote the interests of local school boards. Further, although N.D.C.C. ? 15-21-07 provides that the Superintendent of Public Instruction must provide written answers to all questions concerning school laws, nothing in this or any other statutory provision provides that the Department of Public Instruction is to "legally advise" local school boards generally. In fact, the Superintendent's providing general legal advice would violate N.D.C.C. ? 27-11-01 prohibiting the unauthorized practice of law.

In addition to school boards generally, school administrators are in regular contact with the office of the Superintendent of Public Instruction for assistance on school board administration. Obvious examples are school finance and reorganization (N.D.C.C. chs. 15-40.1 and 15-27.3, 15-27.6). Furthermore, the Superintendent of Public Instruction has a significant relationship with teachers under the law for their certification, discipline, and training (N.D.C.C. ? 15-21-09, chs. 15-36, 15-38) and an appropriation for teacher centers. 1993 N.D. Sess. Laws ch. 3, ? 1(1). As you can see, the Superintendent of Public Instruction has numerous constituencies under the law. Article VIII, Section 1 of the North Dakota Constitution shows the importance of education in this state and the Superintendent of Public Instruction is the statewide official with the most direct responsibility to promote it. It is logic that to do so, the Superintendent of Public Instruction must be involved in all aspects of the educational system to try to produce the best

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educational results.

Your second question asks what obligation the Attorney General's office has to represent the interests of local school districts in the prosecution and defense of cases. The Attorney General's office has no obligation to represent local school districts in the prosecution or defense of cases. In cases in which the interests of the State are involved, such as antitrust actions, the Attorney General's office may represent the State as a whole and its school districts in an action. See 15 U.S.C. ? 15c authorizing state attorneys general to bring actions "parens patriae" to recover on behalf of state residents for antitrust offenses.

The primary obligation to represent a school district both in prosecution and defense of cases would lie with the attorney hired by the school district to provide such representation.

I trust this responds to your questions.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

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cc: Dr. Wayne G. Sanstead
Superintendent of Public Instruction

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