

**OPINION
47-207**

June 5, 1947 (OPINION)

SCHOOL DISTRICTS

RE: Fargo Independent - Power to Acquire Land

Your letter of June 3 addressed to this office has been received and the contents of same have been carefully noted.

You state that there is a subdivision known as Morton and Doty's Addition, located immediately to the southwest of Fargo. The members of the City Commission and the Board of Education think there is no doubt this subdivision will be made a part of the city within a very few years. There will be need for a school building to house several hundred children who will live in that area and an ample site is for sale now and the Board of Education can purchase it at a total cost not to exceed six thousand dollars. If the board should wait until five or six houses are erected on this site, the probability is that these houses alone would cost more than the entire site at the present time. Also if the board should wait until the subdivision is officially made a part of the city, it will be necessary to deal with individual owners or to resort to condemnation proceedings and possibly of quieting title.

You inquire whether under these circumstances the Board of Education of the City of Fargo would have the authority at this time to purchase such site in anticipation of future requirements.

The Fargo School District is an independent district created by special statute in territorial days under an act which took effect March 4, 1885, and which now appears in the North Dakota Revised Code of 1943 as sections 15-5122, both inclusive.

The act provides for a Board of Education which consists of nine members. Section 15-5107 provides that the Board of Education shall be a body corporate in relation to all the powers and duties conferred upon them by the act to be styled "The Board of Education of the City of Fargo" and as such it has the power to sue and be sued, to contract and be contracted with, and shall possess all the powers usual and incident to bodies corporate as shall be herein given and shall procure and use a common seal. Subdivision 2 of section 15-5117 empowers the Board of Education to purchase, sell, exchange and lease houses or rooms for school purposes, lots or sites for school houses, and to fence and improve them as they deem proper. The Fargo School District is co-extensive with the City of Fargo.

Under the provisions of section 15-5107 supra, the Board of Education of the City of Fargo has all the powers of a corporation within the limitations of the act creating the School District. The powers of the Board of Education are those directly granted as well as those that follow by necessary implication.

Undoubtedly the Board of Education may take into consideration the post war expansion of the City of Fargo, the future welfare of its

citizens and residents, having particular reference to the educational system in light of the prospects of general development of the state at large. If, therefore, in the judgment of the Board of Education after considering all attendant circumstances, it would be for the best interest of the City of Fargo and its residents that the proposed site be acquired, we believe it has authority to purchase same. According to the situation be stated in your letter it will be but a short time until action of this kind will be necessary.

Section 15-5120 provides that the title to all school houses, sites, lots, furniture, books, apparatus, and appurtenances, belonging to said city, and used for school purposes, under the control of the board of education, shall vest in the City of Fargo for the use of schools. I would suggest, therefore, that the proposed project be submitted to the City Commission for its approval since it is an undertaking in which all of the residents of the City of Fargo are interested.

If the purchase is made, the title should be taken to "City of Fargo for the use of schools." (See section 15-5121) An abstract of title should be procured and examined by your attorney.

It is the opinion of this office, therefore, that in view of the conditions and circumstances now existing in the City of Fargo that the Board of Education would have the power to acquire the proposed site by purchase provided, of course, that there are funds available therefor.

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Attorney General