

**OPINION  
60-95**

June 1, 1960            (OPINION)

EDUCATION

RE: School Districts - Erection of School House

This is in reply to your letter in which you state that:

"Because of the existence of nontaxable Indian land and a large number of school age Indian pupils within the district, this school board determined it was desirable in providing necessary school privileges for the children of the district that the federal government construct adequate federal educational facilities within the district. Pursuant to this determination, the board and the federal government reached an understanding whereby the district would furnish the land and the government would construct thereon educational facilities and, pursuant to Section 293a, Title 25, U.S.C., lease such facilities to the district. The government is now ready to expend \$228,000 to construct such facilities."

You then advise that the school district has in its present budget the sum of \$5,000 for school construction. You then call to our attention section 185 of the Constitution and conclude by asking whether the contemplated program would be permissible under the North Dakota Constitution and laws.

As part of the consideration it is contemplated that the school district would cause the land to be conveyed by warranty deed by the original owner to the United States government without any conditions attached thereto as to reversion should the land be used for any other purpose than for school purposes as provided for in chapter 15-26 of the N.D.R.C. of 1943. It is, however, understood that the school building constructed on the land so designated or conveyed would be available to the school children of your school district and that the cost for lease of such facilities to the district would include and give consideration to the land so conveyed to the federal government.

Section 185 of the Constitution prohibits the state or school district from loaning or giving its credit or making donations to or in aid of any individual, association, or corporation except for necessary support of the poor.

The contemplated action of the school board to grant or to cause the property involved to be granted or conveyed to the federal government does not in the true sense amount to a donation, nor is it in aid to an individual, association, or corporation. The benefit flowing to the school district as the result of having a school facility constructed in its district which will be available to the district by far exceeds the money the district will be required to

expend to pay for the cost of such land which is to be conveyed to the federal government.

It appears from the facts submitted that your school district would not be in a position to construct school facilities which would adequately fulfill the needs of the school district. Thus, in reality it is your school district that is receiving a benefit rather than making a donation. The contemplated action here apparently is unusual and is an exception to the normal operations of school districts. Consequently the legislature, not having anticipated a situation of this kind, did not provide specific legislation governing transactions as contemplated here. The legislature spelled out in some detail the manner under which a school district may acquire property and dispose of same, but the procedures provided for do not seem to embrace the transaction contemplated by your district. It is reasonably safe to assume that the legislature just never had occasion to expect that a situation of this kind might arise.

The proposed transaction would naturally benefit the school district and alleviate some of the financial stress under which the school district is now operating.

We do not advise what the consideration or cost must be to the school district to lease such facilities after they have been constructed. It is, however, assumed that due consideration will be given to the school district for having provided the federal government with the land upon which the building is constructed. By furnishing a site upon which the school facility is to be built by the federal government, the school district is in reality furnishing in kind rather than money. A school district is authorized to lease school facilities, thus it can be considered that the furnishing of the land is merely a part of the consideration for the lease of such facilities.

The laws found in chapter 15-26 and under other chapters prescribing certain procedures to be followed are primarily designed to prevent school boards from expending money where the taxpayers of the district would not receive adequate benefits for such money expended. They are designed to prevent the expenditure of money for other than school purposes.

We are fully aware that you have an exceptionally unusual situation, but nevertheless the contemplated action will be of material benefit to the school district as a whole, and on that basis we conclude that the proposed transaction is not in violation of the state Constitution or state law.

LESLIE R. BURGUM  
Attorney General