

**OPINION
61-193**

September 1, 1961 (OPINION)

SCHOOL DISTRICTS

RE: Education of Physically Handicapped - Tuition

This office acknowledges receipt of your letter of August 28, 1961, in which you ask our opinion on section 15-59-07 of the North Dakota Century Code, as created by chapter 171 of the 1961 Session Laws, which reads as follows:

EDUCATION OF PHYSICALLY HANDICAPPED - CONTRACT. If any school district in this state has any elementary or high school student who because of his physical handicap is unable to attend the public schools in the district, such school district shall contract with any accredited private nonsectarian nonprofit corporation within or without the state which has proper facilities for the education of such student, if there are no public schools in the state with the necessary facilities which will accept such student. Prior to the time any school district enters into a contract with any private nonsectarian nonprofit corporation for the education of any physically handicapped student the curriculum provided by such school and the contract shall be approved by the superintendent of public instruction. The contract shall provide that such school district agrees to pay to the private nonsectarian nonprofit corporation as part of the cost of educating such student an amount for the school year equal to the county average per pupil elementary or high school cost depending on whether enrollment would be in grade or high school department, in the county in which the contracting district is located. If the attendance of such student at such school is operated for less than a school year, then the contract shall provide for such lesser amount prorated on a monthly basis. For the purpose of this section, any student contracted for to attend a school as herein provided shall be considered as enrolled in the contracting district and the district shall be entitled to the per pupil payment out of the county equalization fund the same as other regularly enrolled students in the district."

You state that numerous requests have come in requesting that children be sent to the Crippled Children's School at Jamestown with the thought in mind that section 15-59-07 will make it possible for the local district to pay the tuition. In view of the fact that this section of the law refers to "any accredited private nonsectarian nonprofit corporation", (emphasis supplied), you ask our opinion as to whether or not a school district may contract with the Crippled Children's School at Jamestown for the education of its student or students.

The word "sectarian" is defined in Webster's New International Dictionary as "Denominational in character or interests, especially narrowly so;" In Words and Phrases, Volume 38, page 445, we find the

following definition: "The word 'sectarian' means 'of or pertaining to a sect or sects.'"

In the case of Gerhardt, et al., v. Heid, et al., 66 N.D. 444, 267 N.W. 127, the North Dakota Supreme Court stated that:

A sectarian school is a school affiliated with a particular religious sect or denomination or under the control or governing influence of such sect or denomination."

We find that the Crippled Children's School at Jamestown is operated by the Lutheran Hospitals and Homes Society of America, a nonprofit corporation for which Article of Incorporation were filed in the office of the Secretary of State on the 17 day of January, 1938. Article 2 of the Articles of Incorporation states the purposes for which the corporation is formed as follows:

To lease, purchase, erect or acquire by devise or bequest, real and personal property essential for the operation and maintenance of christian hospitals and homes used and needed in the caring for sick, infirm, crippled and aged persons, and to do and perform charitable acts incidental to such tasks.

To execute and deliver notes, mortgages and other evidence of indebtedness incurred in the carrying out of said purposes and to make, execute and deliver satisfactions and releases of debts, mortgages, liens and obligations.

To sell, let or sub-let any real or personal property which it may own or in which it may have an interest, or over which it may exercise any control; and to do any and all other things requisite to give effect to the purpose for which this corporation is formed.

Nowhere in the Articles of Incorporation do we find any reference to a possible influence or control of this institution by any Lutheran Synod. The incorporators were a group of laymen and ministers, and the first group of trustees included three ministers and six laymen.

We are reliably informed that any crippled child may secure admission to this school if the facilities permit; that at the present time this institution admits pupils from every religious body; that the minister or priest from the denomination of which the child is a member is permitted to visit and minister to the children regularly; that no courses are offered in the school dealing with the doctrines and polity of the Lutheran Faith; that to all intents and purposes the school is similar in character to a public school, except that its student body is made up entirely of physically handicapped children.

We believe that in answering your question much depends upon the use to which the school is put. In the case of Norwegian Lutheran Church v. Wooster, 176 Wash. 681, 30 P. (2d.) 381, the court in dealing with the question of tax exemptions made the following observations:

As we see it, sectarianism has, therefore, nothing to do with the question here involved. Whether the owner be sectarian or

nonsectarian, the use to which the property is devoted determines the question of exemption from taxation."

We think that this case is somewhat decisive in the matter before us.

As we understand the situation, the Crippled Children's School at Jamestown is operated by a nonprofit corporation which functions entirely independent of any denominational corporation. The only reference to a denomination is the use of the word "Lutheran" in the title of the corporation. It is our further understanding that the present use of the school is to carry out a curriculum that is devoid of denominational emphasis and instruction.

Therefore, it is the opinion of this office that so long as the Crippled Children's School at Jamestown maintains its independent status, and so long as its functions continue in the field of instruction on an entirely nonsectarian basis, any school district in this state may contract with the school for the education of such student or students provided the contract is approved by the superintendent of Public Instruction.

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