

**OPINION
61-212**

July 27, 1961 (OPINION)

SCHOOL DISTRICTS

RE: School Buildings - Removal

This is in response to your request for an opinion on the following facts: A public school district is considering moving a schoolhouse from its present site to another site within the district where there is presently maintained another schoolhouse. They have in mind to use the two schoolhouses located side by side to carry on school for the first four grades in one building and the upper four grades in the other building.

The parents of the children, who are presently or would be attending the school which is anticipated to be moved, are objecting to such plan. The parents of the children have made a written demand and petition to the school board as follows:

The undersigned parents, are the parents of six or more children of compulsory school age residing within two and one-half miles of Munster School No. 2, located in section 3 of Munster Township, Eddy County, North Dakota, and do hereby make written demand upon you to continue to operate and maintain said Munster School No. 2 at its present site and location."

The question is whether or not the school board has authority under the present laws to move the schoolhouse under the facts set out above. We agree with you that under the provisions of Chapter 15-26 which was repealed, the school board would not have had the authority to move the building without petition or voting as provided under chapter 15-26. However, this chapter is no longer in operation.

It is observed that subsection 1 of section 15-29-08, as amended by chapter 158 of the 1961 Session Laws, provides as follows:

. . . . Any school may be discontinued when the average attendance of pupils therein shall be less than six for ten consecutive days, if proper and convenient school facilities for the pupils can be provided in some other school in the territory of the closed school until such time as the school may be reopened by the board. In determining what constitutes proper and convenient school facilities, the board shall consider the distance of each child from the nearest other school and all surrounding circumstances. . . ."

After making other provisions the same section goes on to provide that:

. . . . The board shall reopen any school which has been closed for lack of attendance under this subsection for the next ensuing term upon the written demand of the parents or guardian of six or more children of compulsory school age residing

within two and one-half miles of the school. . . ."

Under subsection 2 of the same section we find that the school board has the power:

To organize, establish and maintain such schools in said district as it may deem requisite and expedient, including high schools and to change and discontinue the same; to acquire sites, construct buildings, and operate schools, to discontinue such schools and liquidate the assets thereof. . . ."

Under subsection 5, it is found that the school board also has the authority:

To purchase, sell and exchange schoolhouses and rooms, lots, or sites for schoolhouses,"

Subsections 2 and 5, however, do not seem to constitute absolute plenary authority to move schoolhouses. The moving of a schoolhouse can in some instances have the same effect as closing a school. A school under subsection 1 can be closed where the attendance has been less than six for ten consecutive days. This same subsection continues to provide that where a school is closed, upon written demand of the parents or guardians of six or more children of compulsory school age, the school shall be reopened.

These provisions strongly suggest that where a school is moved and relocated at a distance greater than two and one-half miles that the parents of six or more children could demand that the school not be moved or relocated. We find very little distinction between closing a school and moving a school so that it is no longer accessible to the schoolchildren within a certain area. We believe that the two and one-half miles serves as a main factor to be taken into consideration as to when a school is available. Taking for example, the situation where school "A" was located only five miles from schoolhouse "B". If the school board were to desire to close school "A" and require the attendance of the pupils to school "B", the parents of six or more children could demand that schoolhouse "A" be reopened. We find the proposal of the school district very similar to the hypothetical situation.

It is, therefore, our opinion that the school board is without authority to move the school building under the facts stated herein where the parents of six or more children have made a written demand that the school remain open. We find little distinction in a demand to reopen the school or to keep the school open where it is. One would appear to be as effective as the other.

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