

N.D.A.G. Letter to Vogelpohl (Nov. 2, 1988)

November 2, 1988

Mr. Steven L. Vogelpohl
Lincoln City Attorney
P.O. Box 2575
Bismarck, ND 58502-2575

Dear Mr. Vogelpohl:

Thank you for your letter of August 31, 1988, providing additional information concerning the bidding process for the Bismarck School District's bus transportation routes. You provided this information to obtain a clarification of N.D. Att'y Gen. Op. 88-13. I apologize for the delay in responding to you.

The information in your letter indicates that in the bidding process the bidder was required to include a separate per mile price for each route, including the routes for the city of Lincoln students. The per mile price established for the city of Lincoln students in the bids in question is actually greater than the composite price for all the routes. The composite price is the final contract price.

Given this additional information, it is my opinion that so long as the separately bid price for transportation of the Lincoln students is greater than the amount billed by the school district, the city can levy up to the amount billed by the district even although such amount is greater than the composite contract price.

For example, if the bid price for the Lincoln route were \$2.52 per mile and the composite contract price were \$1.67 per mile, the city could levy up to the amount billed by the school district although the amount levied might work out to a figure greater than \$1.67 per mile. Such payment would actually represent a savings to the city of Lincoln from its actual higher route prices and would be in compliance with N.D.C.C. § 57-15-55.1, which limits the levy to the difference between the estimated state transportation payment and the district's estimated actual cost. The separately established bid route prices are a legitimate consideration as to what would be the "estimated actual cost" of the transportation provided.

I hope this information is helpful to you.

Sincerely,

Nicholas J. Spaeth

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