

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 99-F-15

Date issued: November 29, 1999

Requested by: Dr. Wayne G. Sanstead, Senator Tony Grindberg,
Representative Al Carlson

- QUESTION PRESENTED -

May North Dakota school districts participating in one or more United States Department of Agriculture child nutrition programs contract with child care centers and other organizations providing services to children to provide meal service to those centers?

- ATTORNEY GENERAL'S OPINION -

It is my opinion that a school district does not have the specific authority to contract with child care centers and other organizations providing services to children to provide meal service to those centers. However, it is my further opinion that a school district may enter into such a contract if it does so pursuant to an agreement between the school board and the Department of Public Instruction for the school district to provide those services under the Department of Public Instruction's child nutrition and food distribution program.

- ANALYSIS -

N.D.C.C. ch. 15-54 contains the general authority for state involvement in child nutrition programs. School board involvement in child nutrition programs is provided in N.D.C.C. § 15-54-04 as follows:

Pursuant to any power of school boards to operate or provide for the operation of child nutrition and food distribution programs in schools under their jurisdiction, school boards may use therefor funds disbursed to them under the provisions of this chapter, gifts, and other funds received from the sale of meals under such programs.

N.D.C.C. § 15-54-04.

School board authority is strictly construed in both its existence and extent. Myhre v. School Board of North Central Public School District No. 10, 122 N.W.2d 816, 819-820 (N.D. 1963); 1993 N.D. Op. Att'y Gen. L-230. School boards have only the powers expressly granted by statute and the powers necessarily implied to carry out the specific grant of authority. Fargo Education Association v. Fargo Public School District No. 1, 291 N.W.2d 267, 271 (N.D. 1980); 1994 N.D. Op. Att'y Gen. L-287; 1995 N.D. Op. Att'y Gen. L-71. However, "[a]s a general rule courts will not interfere with the discretion of school boards in the performance of their duties except to prevent an abuse of [that discretion]." Herman v. Medicine Lodge School Dist. No. 8, 71 N.W.2d 323, 329 (N.D. 1955).

N.D.C.C. § 15-54-04 gives school boards authority to provide child nutrition programs "in schools under their jurisdiction." There is no statutory authority for a school board to sell meals to child care centers or other child care organizations that do not constitute "schools under their jurisdiction." A school board is the governing body of a school district. N.D.C.C. § 15.1-09-33. As such, if the school board does not have a certain power to act, neither does the school district. Thus, it is my opinion that a school district itself does not have the power or authority to sell prepared meals to child care centers or other child care organizations unless those centers are considered "schools under [the school board's] jurisdiction."

Conversely, the North Dakota Department of Public Instruction (hereafter DPI) does have the authority to establish a child nutrition and food distribution program involving both public and private entities. N.D.C.C. § 15-54-03. That section states:

The state [department of public instruction] may enter into such agreements with any agency of the federal government, with any person, public or nonprofit private agency, school, institution, organization, corporation, limited liability company, firm, foundation, or entity and prescribe such regulations, employ such personnel, and take such other action, as it may deem necessary to provide for the establishment, maintenance, operation, and expansion of any child nutrition and food distribution program

N.D.C.C. § 15-54-03. As this office has previously stated, N.D.C.C. § 15-54-03 gives DPI very broad authority to take whatever action it deems necessary to provide nutritional programs. 1981 N.D. Op. Att'y

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Gen. 128. Accordingly, it is my opinion that DPI could create a nutritional program that involved selling lunches to child care centers and organizations.

As part of its broad authority to provide nutritional programs, DPI is authorized to enter into agreements with schools, public agencies and private organizations to further that goal. N.D.C.C. § 15-54-03; 1981 N.D. Op. Att'y Gen. 128. A reasonable exercise of that authority would include contracting with school districts and their boards for the provision of lunches to child care centers or organizations.

Economic competition by governmental entities is legally acceptable if the entities are operating within the parameters of the law. 1996 N.D. Op. Att'y Gen. L-6 (Jan. 22 letter to Koppy). In this case, the initial determination of whether to enter an agreement which may result in competition with private enterprise is up to the school board. Ultimately, the propriety of such competition is a question of public policy for the Legislature to decide. Accordingly, it is my opinion that a school district may sell prepared lunches to child care centers or organizations if the school district has entered into an agreement with DPI to provide that service pursuant to DPI's child nutrition and food distribution program.

- EFFECT -

This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.

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