

**LETTER OPINION
2002-L-01**

January 4, 2002

Honorable Frank Klein
State Representative
4840 104th Ave SW
Dickinson, ND 58601

Dear Representative Klein:

Thank you for your letter asking three questions regarding N.D.C.C. § 15.1-06-17.1. That section provides:

Religious objects or documents – Display. A religious object or document of cultural, legal, or historical significance which has influenced the legal and governmental systems of the United States and this state may be displayed in a public school building together with other objects or documents of cultural, legal, or historical significance, which have influenced the legal and governmental systems of the United States and this state. The display of a religious object or document under this section must be in the same manner and appearance generally as other objects and documents displayed and may not be presented or displayed in any fashion that results in calling attention to the religious object or document apart from the other displayed objects or documents. A school board shall develop a policy for the proper display of any religious objects or documents.

You first question whether N.D.C.C. § 15.1-06-17.1 requires a school district to develop a policy regarding the display of any religious objects or documents. The last sentence of section 15.1-06-17.1 provides that a “school board shall develop a policy for the proper display of any religious objects or documents.” It is well-established law that the word “shall” is mandatory. See State v. Hill, 590 N.W.2d 187, 188 (N.D. 1999), aff’d, 615 N.W.2d 135 (N.D. 2000) (the word “shall” in N.D.R. Ev. 615 is mandatory); City of Devils Lake v. Corrigan, 589 N.W.2d 579, 581 (N.D. 1999) (stating that “[t]he word ‘shall’ in a statute ordinarily creates a mandatory duty”); Lippert v. Grand Forks Pub. Sch. Dist., 512 N.W.2d 436, 439 (N.D. 1994) (explaining that the word “shall” ordinarily creates a mandatory duty); Homer Township v. Zimney, 490 N.W.2d 256, 259 (N.D.

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1992); In re C.J.A., 473 N.W.2d 439, 441 (N.D. 1991). Based upon the general rules of statutory construction and the purpose of N.D.C.C. § 15.1-06-17.1, it is my opinion that school districts are required to develop a policy for the display of any religious objects or documents.

You next question whether a school district's policy regarding the display of religious objects or documents is required to be more restrictive than the law. The display of a religious object or document under N.D.C.C. § 15.1-06-17.1 "must be in the same manner and appearance generally as other objects and documents displayed and may not be presented or displayed in any fashion that results in calling attention to the religious object or document apart from the other displayed objects or documents." A school board's policy regarding the display of religious objects or documents may not be less restrictive than the quoted language, i.e. the policy cannot permit the religious object or document to be displayed in a manner that results in the calling attention to the religious object or document apart from the other displayed objects or documents. N.D.C.C. § 15.1-06-17.1 does not require that a school board's policy be more restrictive than the quoted prohibition.

Your final question is whether N.D.C.C. § 15.1-06-17.1 mandates that the superintendent be the only person to make the decision as to what religious objects or documents are displayed. The language of N.D.C.C. § 15.1-06-17.1 does not address who makes the decision regarding the display of a religious object or document. As previously discussed, the last sentence of the statute requires school boards to develop a policy for the proper display of any religious objects or documents. It would be appropriate for that policy to establish how and who decides what religious objects and documents will be displayed. Whether the superintendent makes the final decision, the school board, or some committee is not dictated by N.D.C.C. § 15.1-06-17.1.

I hope this letter assists school boards in complying with the requirements of N.D.C.C. § 15.1-06-17.1.

Sincerely,

Wayne Stenehjem
Attorney General

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