

**LETTER OPINION  
2003-L-06**

February 10, 2003

Honorable Francis J. Wald  
State Representative  
433 7th Street East  
Dickinson, ND 58601-4525

Dear Representative Wald:

Thank you for your letter asking if a public school district may share the proceeds of an educational technology tax levy on a per-student basis with private/parochial school students.

Section 57-15-14.5, N.D.C.C., authorizes a public school district board to impose a tax levy of up to five mills for long-distance learning and educational technology. The tax may be imposed only if approved by majority vote of the electors of the school district. Id. With respect to educational technology, revenue from the levy may only be used to purchase and maintain computer software, computers, computer networks, other computerized equipment, and to pay the salary of one staff person to supervise the use and maintenance of the educational technology. Id.

You ask whether a local school district may distribute educational technology funds raised by local property taxation under N.D.C.C. § 57-15-14.5 to private/parochial schools based on the number of students attending those schools (per-student basis).

The North Dakota Constitution provides:

All colleges, universities, and other educational institutions, for the support of which lands have been granted to this state, or which are supported by a public tax, shall remain under the absolute and exclusive control of the state. No money raised for the support of the public schools of the state shall be appropriated to or used for the support of any sectarian school.

N.D. Const. art. VIII, § 5 (emphasis added).

The money in question will be raised by the public school district for the public school district by authority provided in statute. Article VIII, section 5 of the North Dakota Constitution forbids any such money from being appropriated to a sectarian school. A sectarian school is one "affiliated with or operated by, or under the control or governing influence of, some religious denomination or sect." Gerhardt v. Heid, 267 N.W. 127, 131 (N.D. 1936). A parochial school is a sectarian school and is defined as "a school supported by a church parish." The American Heritage Dictionary 904 (2d coll. ed. 1991). If a public school district paid its taxpayer-raised funds for educational technology purposes to a private/parochial school, it would be an appropriation of funds raised for support of a public school to a sectarian school. It is my opinion that a public school district's sharing its educational technology funds with a sectarian school on a per-student basis is forbidden by article VIII, section 5 of the North Dakota Constitution. See N.D.A.G. 91-03.

Even in the absence of the constitutional prohibition discussed above, N.D.C.C. § 57-15-14.5 does not contemplate expenditure of the educational technology funds outside the schools of the district raising those funds. However, there may be other opportunities for private/parochial school students to obtain the benefits of computer-related education by attending specific classes concerning computers in the public schools. North Dakota public schools are free, open, and accessible to any child resident in the district. N.D.C.C. §§ 15.1-06-01 and 15.1-09-33(1). Therefore, students resident in the district enrolled in a private/parochial school could attend a class concerning computers in the schools of their public school district, and the public school would receive proportionate state aid payments for that attendance. N.D.C.C. § 15.1-27-18(2).

Sincerely,

Wayne Stenehjem  
Attorney General

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