

**LETTER OPINION
2005-L-07**

February 7, 2005

The Honorable Larry Bellew
State Representative
House Chambers
600 East Boulevard Avenue
Bismarck, ND 58505

Dear Representative Bellew:

Thank you for your letter asking whether the method for setting university tuition and fees under N.D.C.C. § 15-10-17 complies with the state constitution. For the reasons indicated below, it is my opinion that N.D.C.C. § 15-10-17(3) complies with the applicable provisions of the North Dakota Constitution.

ANALYSIS

Section 15-10-17, N.D.C.C., provides, in part, as follows:

The state board of higher education has all the powers and shall perform all the duties necessary to the control and management of the institutions described in this chapter. In addition to the powers and duties specified in section 6 of article VIII of the Constitution of North Dakota, the board may:

....

3. Set tuition and fees.

Although this provision was amended in 2001, as noted in your letter, the actual statutory authority for the State Board of Higher Education to set tuition dates back to 1999. See 2001 N.D. Sess. Laws ch. 162, § 1 and 1999 N.D. Sess. Laws ch. 157, § 2.

The constitutional provision that you mention in your letter is N.D. Const. art. VIII, § 2, which provides as follows:

The legislative assembly shall provide for a uniform system of free public schools throughout the state, beginning with the primary and extending through all grades up to and including schools of higher education, except that the legislative assembly may authorize tuition, fees and service charges to assist in the financing of public schools of higher education.

In interpreting clauses in a constitution, it must be presumed that the words have been employed in their natural and ordinary meaning. Cardiff v. Bismarck Public School District, 263 N.W.2d 105, 107 (N.D. 1978). This section of the constitution generally provides for a uniform system of free public education, but as an exception permits the Legislative Assembly to authorize tuition and fees for public schools of higher education in the state. The Legislative Assembly has exercised this constitutional power by enacting N.D.C.C. § 15-10-17(3) which authorizes the State Board of Higher Education to set tuition and fees for the institutions under its control.

The State Board of Higher Education has also been provided other broad powers under N.D. Const. art. VIII, § 6, including “full authority over the institutions under its control . . . [with] the power to delegate to its employees details of the administration of the institutions under its control.” Id. at 6(b). This constitutional provision also states:

[T]he heads of the several state institutions [may] submit the budget requests for the biennial appropriations for said institutions to said state board of higher education; and said state board of higher education shall consider said budgets and shall revise the same as in its judgment shall be for the best interests of the educational system of the state; and thereafter the state board of higher education shall prepare and present to the state budget board and to the legislature a single unified budget covering the needs of all the institutions under its control. . . .

The said state board of higher education shall have the control of the expenditure of the funds belonging to, and allocated to such institutions and also those appropriated by the legislature, for the institutions of higher education in this state;

Id. at 6(d) and (e).

“Every legislative enactment is presumed valid.” N.D.A.G. 94-F-29 (citing First American Bank & Trust Company v. Ellwein, 198 N.W.2d 84, 95 (N.D. 1972). “One who attacks a statute on constitutional grounds, defended as that statute is by a strong presumption of constitutionality, should bring up his heavy artillery or forego the attack entirely.” S. Valley Grain Dealers Ass’n v. Bd. of County Comm’rs of Richland County, 257 N.W.2d 425, 434 (N.D. 1977). Based on the strong presumption of constitutionality and a plain reading of the above-quoted constitutional provisions, it is clear the authority granted by the Legislature to the State Board of Higher Education to set tuition and fees in N.D.C.C. § 15-10-17 complies with these provisions of the constitution.

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In your letter, you allude to the state universities setting their own tuition rates. While various institutions of higher education provide suggested tuition rates as part of the annual budgeting process, the State Board of Higher Education actually approves and establishes the tuition rates. See State Board of Higher Education Policy Section 805.1 Tuition (“The Board shall annually establish tuition rates.”). See also N.D.C.C. § 15-10-17(3). Each year the State Board of Higher Education approves annual budget guidelines which include proposed tuition rates. See, e.g., North Dakota State Board of Higher Education Minutes, February 19, 2004, pp. 8-10. Thus, while it may appear at first glance that institutions of higher education set their own rates, they are only proposed rates which ultimately must be approved by the State Board of Higher Education as provided by law and policy. Based on the foregoing, it is my opinion that N.D.C.C. § 15-10-17(3) complies with the applicable provisions of the North Dakota Constitution.

Sincerely,

Wayne Stenehjem
Attorney General

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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. See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).