

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 96-F-07

Date issued: March 26, 1996

Requested by: Jeff Rotering, Adams County State's Attorney

- QUESTION PRESENTED -

Whether any or all persons assigned by a county commission, under N.D.C.C. § 15-22-01.1, to act in place of a county superintendent of schools must possess the qualifications of a county superintendent of schools provided in N.D.C.C. § 15-22-02.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that the qualifications required of county superintendents of schools under N.D.C.C. § 15-22-02 do not apply to any person or persons assigned by the county commission to perform the duties of a county superintendent of schools pursuant to N.D.C.C. § 15-22-01.1.

- ANALYSIS -

The statute in question provides:

Notwithstanding any other provision of law, a board of county commissioners may by majority vote choose not to employ a county superintendent of schools and may assign, to one or more qualified persons, all statutory duties of county superintendents of schools. The assignment of duties must be set forth in a written plan, and the plan must be approved by a majority of the presidents of school boards whose districts include land in the county and must be placed on file with the legislative council.

N.D.C.C. § 15-22-01.1.

The qualifications for county superintendents of schools are stated as:

The county superintendent of schools must be a bachelor degree graduate of a regional or nationally accredited college or university approved for teacher education, must hold a valid teacher's certificate, and successful

experience in teaching in an approved elementary or secondary school. . . .

N.D.C.C. § 15-22-02.

When interpreting statutes, our law provides:

When the wording of a statute is clear and free of all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.

N.D.C.C. § 1-02-05. Also, the North Dakota Supreme Court has stated: "Generally, the law is what the Legislature says, not what is unsaid." Little v. Tracy, 497 N.W.2d 700, 705 (N.D. 1993). In Little, the court further stated:

It must be presumed that the Legislature intended all that it said, and that it said all that it intended to say. The Legislature must be presumed to have meant what it has plainly expressed. It must be presumed, also, that it made no mistake in expressing its purpose and intent. Where the language of a statute is plain and unambiguous, the "court cannot indulge in speculation as to the probable or possible qualifications which might have been in the mind of the legislature, but the statute must be given effect according to its plain and obvious meaning, and cannot be extended beyond it."

Id., quoting City of Dickinson v. Thress, 290 N.W. 653, 657 (N.D. 1940).

In this case the Legislature authorized the board of county commissioners, notwithstanding any other provision of law, to not employ a county superintendent of schools but, rather, to assign those duties to one or more qualified persons. In other words, individuals serving pursuant to appointment are not county superintendents of schools but are persons authorized to act in the place of a county superintendent of schools. If the Legislature had intended for persons appointed by county commissions to act in the place of county superintendents of schools to actually have the qualifications required by statute of a county superintendent of schools, the Legislature would have so stated.

When the Legislature authorized county commissions to employ part-time county superintendents in 1993, the Legislature specifically stated that persons acting as part-time county

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superintendents must have the qualifications of county superintendents provided in N.D.C.C. § 15-22-02.

. . . Notwithstanding any other provision of law except section 15-22-01, a board of county commissioners may by majority vote employ a person who meets the qualifications provided in section 15-22-02 to serve as the county superintendent of schools on a part-time basis.

N.D.C.C. § 11-10-10.5.

By its 1995 enactment, the Legislature authorized a county commission using the provisions of N.D.C.C. § 15-22-01.1 to determine who is qualified to act in the place of a county superintendent of schools.

The county commission should not assign county superintendent duties to an officer if the duties assigned are incompatible with that officer's other duties. See State v. Lee, 50 N.W.2d 124 (N.D. 1951); Tarpo v. Bowman Public School Dist. No. 1, 232 N.W.2d 67 (N.D. 1975); 1993 N.D. Op. Att'y Gen. L-214.

- 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.

Heidi Heitkamp
ATTORNEY GENERAL

Assisted by: Robert E. Lane
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