

Office of the Attorney General
State of North Dakota

Opinion No. 85-31

Date Issued: August 20, 1985

Requested by: Dr. Wayne G. Sanstead
Superintendent
Department of Public Instruction

--QUESTION PRESENTED--

Whether a school district has the legal authority to borrow money from the federal Environmental Protection Agency to aid the school district in funding the removal costs of asbestos.

--ATTORNEY GENERAL'S OPINION--

It is my opinion that a school district does not have the legal authority to borrow money from the federal Environmental Protection Agency to aid the school district in funding the removal costs of asbestos.

--ANALYSIS--

It is a general rule of law in this state that school officers only have those powers that are either express or necessarily implied by statute. *Gillespie v. Common School Dist. No. 8, McLean County*, 216 N.W. 565 (N.D. 1927). It is also a general rule of law that a school district has no authority in the absence of a constitutional or statutory provision to incur indebtedness. 79 C.J.S. *Schools and School Districts* § 323, at 7.

I can find no specific authority in law for a school district to enter into loans with federal agencies.

The Legislature has authorized borrowing in certain instances. For example, a school district may borrow in anticipation of revenue from taxes already levied, N.D.C.C. § 21-02-02; it may borrow for bonding purposes, N.D.C.C. § 21-03-04; and it can in essence borrow (lease school buildings) from the State School Construction Fund, N.D.C.C. Ch. 15-60. It is actually a class A misdemeanor for any school official to participate in the issuing of a warrant that is greater than the cash on hand excepting sinking funds, payment of bond issue interest, or certificates of indebtedness. See N.D.C.C. § 21-01-03.

This office has traditionally taken the position that a school district has no general authority to borrow. In 1956, the Ellendale

Special School District wanted to borrow \$8,000 from a local lending institution to build a teacherage. We held that there was no legal authority to enter into that type of transaction. 1956 N.D. Op. Att'y Gen. 111. Other states' attorneys general have reached similar conclusion. See, e.g., Ariz. Op. Att'y Gen. 84-150.

--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until such time as the question presented is decided by the courts or the applicable provisions of law are amended or repealed.

Nicholas J. Spaeth
Attorney General

Assisted By: Rick D. Johnson
Asisistant Attorney General