

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 90-25

Date issued:                   October 16, 1990

Requested by:                 Robert G. Hoy  
                                  Cass County State's Attorney

- QUESTION PRESENTED -

Whether N. D. C. C. ' 15-27.1-11 applies to any children other than those of a dissolved, nonoperating school district who were students at the time the district was attached to an operating school district.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that N. D. C. C. ' 15-27.1-11 does apply to certain children other than those of a dissolved, nonoperating school district who were students at the time the district was attached to an operating school district.

- ANALYSIS -

Nonoperating school districts were required, by July 1, 1989, to reorganize, annex, or dissolve their territory to become part of school districts operating either an approved elementary or high school. N. D. C. C. ' 15-27.1-11. Many nonoperating school districts were located along the North Dakota border and had been sending their students to schools in bordering states. A question has arisen concerning which students living in the geographical area of a former nonoperating school district may attend school in a bordering state after the reorganization, annexation, or dissolution of a nonoperating district. N. D. C. C. ' 15-27.1-11 provides:

Any student who resides within a school district which is annexed to or reorganized with another district or districts pursuant to sections 15-27.1-11 and 15-27.4-01, and which has been sending students to a school district in a bordering state . . . because of proximity or terrain, shall be permitted to attend or continue to attend school in the district in the bordering state . . . .

Thus, students residing in the geographical area of the former nonoperating school district who, because of proximity or terrain, were sent to and attended school in a bordering state when their nonoperating school district became a part of another school district may continue to attend school in the bordering state. However, the statute is unclear concerning other students.

The legislative history may be considered in determining the intent of an unclear statute. N. D. C. C. ' 1-02-39. One purpose of N. D. C. C. ' 15-27. 1-11 is to allow family traditions of sending their children to a certain school to continue. Hearing on S. 2044 Before the House Education Subcomm., 50th N. D. Leg. (March 9, 1987) (Statements of Rep. D. Olson). Thus, if the older siblings attended school in a bordering state, then the younger siblings just coming of school age may attend the same school notwithstanding a reorganization, annexation, or dissolution.

The legislative history also indicates that if a family moves into the geographical area of a former nonoperating school district after its reorganization, annexation, or dissolution, the new residents may send their children to the school in the bordering state to which students had been sent when the district was a nonoperating district. Hearing on S. 2044 Before the House Education Subcomm. 50th N. D. Leg. (March 9, 1987) (Statement of Rep. Myrdal).

It is unclear whether a student of a former nonoperating school district, who previously attended school in the school district of which the nonoperating school district was made a part, must be permitted to attend school in the bordering state. One of the purposes of N. D. C. C. ' 15-27. 1-11 is to allow the tradition of a particular family sending its children to a certain school to continue. Allowing a family which has traditionally sent its children to the North Dakota school district which absorbed the former nonoperating school district, to send their child to a school in a bordering state would not further that purpose. Another purpose of the statute, however, is to allow parents to send their children to the school that is the most convenient and easiest in regard to proximity or terrain. Hearing on S. 2044 Before the House Education Comm., 50th N. D. Leg. (March 4, 1987) (Statements of Reps. Meyer, Olsen, and Shaw). Thus, if it is both more convenient for such a child to attend school in a bordering state because of proximity or terrain and the family lives in that part of the former nonoperating school district from which students were sent to a school in a bordering state because of proximity or terrain, then children residing in that area may attend school in the district in the bordering state.

- 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.

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