

LETTER OPINION
93-L-45

February 15, 1993

Honorable Dagne Olsen
State Representative
House Chamber
State Capitol
600 East Boulevard Avenue
Bismarck, ND 58505

Dear Representative Olsen:

Thank you for your January 25, 1993, letter concerning the North Dakota School for the Blind and potential changes to the mission of the School for the Blind being contemplated by the Legislative Assembly.

You describe the School for the Blind as presently providing a variety of educational services including:

daily instruction, including academic subjects, related services - occupational therapy, speech therapy, and physical therapy; daily living skills; mobility; braille; adaptive technology; vocational services; diagnostic services; evaluation services; library services; residential program to access the full array of services; and an outreach program to provide services to students around the state located in local school districts.

In your letter you describe the potential changes as follows:

Proposed changes for the North Dakota School for the Blind include moving the school from Grand Forks to the Developmental Center in Grafton. In addition, funding levels would be cut to such a level that there would be no day instructional programs provided by the staff of the school. Children attending the school would receive residential services at the Developmental Center and be educated in local schools. Outreach services would be provided by itinerant instructors from the "School for the Blind." The staff of the North Dakota School for the Blind would maintain a resource center at Grafton and provide consultation and itinerant outreach services only to the public school settings around the state. Occasionally, students would be brought in for short-term skills training including braille, mobility, and adaptive technology.

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You ask whether adoption of the proposals outlined in your letter for the School for the Blind would allow it to still be, in reality, the "North Dakota School for the Blind."

Article IX, Section 13 of the North Dakota Constitution provides in pertinent part:

Section 13. The following public institutions are located as provided, each to have so much of the remaining grant of one hundred seventy thousand acres of land made by the United States for "other educational and charitable institutions" as is allotted by law:

. . . .

2. The school for the blind at the city of Grand Forks in the county of Grand Forks or at such other location as may be determined by the legislative assembly to be in the best interests of the students of such institution and the state of North Dakota.

. . . .

No other institution of a character similar to any one of those located by article IX, section 12, or this section shall be established or maintained without an amendment of this constitution.

(Emphasis added). When first enacted, the law concerning the program to be provided by the School for the Blind, then referred to as the Blind Asylum, provided that a board of trustees had power to enact bylaws and rules for the regulation of the School for the Blind and "to provide employment and instruction for the inmates, to appoint a superintendent, a steward, a matron, a teacher or teachers, and such other officers as in their judgment the wants of the institution may require, and prescribe their duties."
1895 N.D. Sess. Laws ch. 24, ? 7.

At the present time, the educational mission of the School for the Blind is described as:

25-06-07. Instruction at school for the blind.
The superintendent of the school for the blind shall provide employment for the pupils at the school for the

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blind. Such pupils shall receive instruction in general subjects as well as in vocational training. The proceeds and products arising from the labor and employment of the pupils of the school for the blind shall inure to the use and benefit of the school for the blind.

N.D.C.C. ? 25-06-07.

Over the past 98 years, the mission of the School for the Blind has been described in very general terms. The constitution merely gives a name and general purpose for the institution as well as a location that may be changed by the Legislative Assembly if it determines it to be in the best interests of the students and the state of North Dakota. The current North Dakota School for the Blind is the product of evolution and legislative action through the appropriation process in authorizing certain funding levels and programs.

Article IX, Section 13 of the North Dakota Constitution describes all of the entities listed therein as being public institutions. An institution is defined as "an organization having a social, educational . . . purpose, as a school . . . the building housing such an organization . . ." Webster's New World Dictionary, 2d College Ed. (1982), p. 730

The School for the Blind must fulfill the general definition of a school. School is defined as:

1. a place or institution for teaching and learning; specif., a) an institution for teaching children b) a place for training and instruction in some special field, skill, etc. . . .
2. the building or buildings, classrooms, laboratories, etc. of any such establishment
3. all the students, or pupils, and teachers at any such establishment. . .

Webster's New World Dictionary, 2nd College Ed. (1982), p. 1274. In addition, the School for the Blind must provide the instruction or education to blind students.

Consequently, it is my opinion that the North Dakota School for the Blind must be an educational facility which provides direct educational services to blind

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students. In my opinion, any changes to the School for the Blind which would eliminate the school's either being a facility or providing direct educational services would require a constitutional amendment.

Legislation introduced at the Fifty-third Legislative Assembly (HB 1194 and HB 1294) did not remove the requirement that instruction be provided to pupils. It did, however, severely limit the subject matter to be taught and provided that instruction could be in classrooms and by outreach programs.

The breadth and duration of education or instruction which must be directly provided by the School for the Blind in order for it to continue to be a school is a factual determination for the Legislature and the courts.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

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