

N.D.A.G. Letter to Stastney (Jan. 4, 1990)

January 4, 1990

Mr. Ronald C. Stastney
Assistant Superintendent
Department of Public Instruction
State Capitol
600 East Boulevard Avenue
Bismarck, ND 58505

Dear Mr. Stastney:

Thank you for your August 8, 1989, letter inquiring whether the Grand Forks military base district's school board may delegate its power and duty to submit grant applications to various federal and state agencies to another school district. I apologize for the delay in responding to your opinion request.

School boards have no powers except those expressly or implicitly granted by statute. Myhre v. School Bd., 122 N.W.2d 816, 919 (N.D. 1963). "[I]n defining the powers of school officers, the rule of strict construction applies, and any doubt as to the existence or extent of such powers must be resolved against the school board." Id. at 819-20 (citations omitted).

N.D.C.C. ch. 15-27.5 provides for the creation of a school district and school board on a military installation. Of particular relevance to your question is N.D.C.C. § 15-27.5-04, which sets forth the duties of a school board organized pursuant to N.D.C.C. ch. 15-27.5. In addition, N.D.C.C. § 15-27.5-03, which requires the board to appoint a business manager, and N.D.C.C. §§ 15-29-09, 11, and 13, which prescribe the duties of the business manager, should be considered. To be valid any delegation must be authorized by these Provisions.

N.D.C.C. § 15-27.5-04 provides:

15-27.5-04. School board - Duties. Any school board established pursuant to this chapter shall, in the conduct of its business:

....

3. Enter into written contracts or agreements to provide for the education of the children residing in the school district.

(Emphasis supplied.)

Although N.D.C.C. § 15-27.5-04 authorizes a military installation school board to contract

with another district "for the education of the children" living in the district, it does not expressly authorize a board to delegate its fiscal responsibilities to another district in the contract. However, the school board duties prescribed in section 15-27.5-04 are not exclusive.

N.D.C.C. § 15-27.5-05 provides, in part:

15-27.5-05. Application of chapter 15-29 to school districts established under this chapter. The presidents of school boards established under this chapter shall have the duties provided in section 15-29-04. The school boards of school district established under this chapter shall have the powers and duties provided in section 15-29-08 if applicable or unless preestablished agreements prevail. The business manager of school districts established under this chapter shall have the duties provided in section 15-29-09. . . . Sections 15-29-07, 15-29-10, 15-29-11, 15-29-13, and 15-29-14 apply to school districts established under this chapter.

N.D.C.C. § 15-29-08 does not authorize the school board to delegate its fiscal responsibilities, including the duty to submit grant applications to federal and state agencies, to another school district.

Neither N.D.C.C. § 15-27.5-04, which specifically establishes the duties of a military installation school board, nor N.D.C.C. § 15-29-08, which generally establishes the powers and duties of school boards, authorize a military installation school board to delegate to another district the duty to submit grant applications to federal and state agencies. Any doubt as to the existence of this authority must be resolved against the school district. See Myhre, 122 N.W.2d at 819-20.

However, because a military installation school board lacks the authority to delegate this duty to another school district does not mean that it is altogether precluded from delegating this duty. N.D.C.C. § 15-27.5-03 imposes a duty on a military installation school board to appoint a business manager. The business manager of a military installation school district has the duties provided in N.D.C.C. § 15-29-09. N.D.C.C. § 15-27.5-05.

The business manager is to "[r]eceive or have custody of all moneys" the school board receives. N.D.C.C. § 15-29-09(12). The business manager is also authorized to perform other duties as assigned by the board. N.D.C.C. § 15-29-09(6). A business manager may not be a member of the board, and must be bonded. N.D.C.C. §§ 15-27.5-03, 15-27.5-05 and 15-29-11. A military installation may delegate its fiscal responsibilities to its business manager.

One fiscal responsibility which could be delegated to the business manager is the authority to apply for grants. N.D.C.C. § 15-29-09(6). A school board's delegation of this type of fiscal responsibility to its business manager is contemplated by the state foundation aid statutes. N.D.C.C. § 15-40.1-09 requires the business manager of each

district claiming payments from state funds to submit the designated forms and applications to county and state officials. Therefore, a military installation school district may delegate its authority to apply for grants to its business manager. Nothing prohibits a military installation from appointing a business manager who is also employed by another school district. As a practical matter, however, the business manager may be physically unable to represent both districts within available time and unable to reconcile conflicting positions of the military installation and the other school district.

Based on the foregoing discussion, it is my opinion that a military installation school board may delegate its power and duty to submit grant applications to federal and state agencies to a business manager but not to another school district.

I hope that the above discussion has answered your questions.

Sincerely,

Nicholas J. Spaeth

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