

N.D.A.G. Letter to Koppy (March 14, 1990)

March 14, 1990

Mr. Allen Koppy
Morton County State's Attorney
210 2nd Avenue NW
Mandan, ND 58554

Dear Mr. Koppy:

Thank you for your February 2, 1990, letter asking whether the New Salem Public School District, which was reorganized in 1959, may legally charge a user fee to the riders of its rural bus service.

N.D.C.C. § 15-27.3-10 provides:

15-27.3-10. Transportation required. A reorganization proposal must provide for the transportation of students and must specify if family-type or public schoolbus-type of transportation shall be used, and if the proposal is approved by the voters of the new district, then the school board of the district shall provide adequate and practical transportation of the type specified, except that if family-type transportation is specified, the school board may later substitute public schoolbus-type transportation. A reorganized school district is not bound by the schedule of payments or limitations provided in section 15-34.2-03, and shall establish a schedule of transportation payments as is proper under the circumstances affecting that district, but the newly established schedule of payments may not be less than the amounts specified in section 15-34.2-03 for family-type transportation.

Thus, the requirement that all reorganized school districts furnish or pay for transportation is not imposed directly by statute, but rather by the reorganization plans that are statutorily required in the reorganization process. Kadrmass v. Dickinson Pub. Schools, 108 S. Ct. 2481, 2470 (1988).

N.D.C.C. § 15-27.3-19 provides that any provision of the reorganization plan may be changed by the voters in the affected districts. The voters in the New Salem Public School District may modify the transportation provision in the reorganization plan because transportation is not listed as one of the provisions of the reorganization plan which may not be changed.

The voters in a reorganized school district could modify the transportation provision in the reorganization plan to remove the district's obligation to furnish transportation. The reorganized school district, however, may not charge a user fee for transportation.

N.D.C.C. § 15-43-11.2 provides, in part:

15-43-11.2. Authorized fees. A school board is authorized to require payment of the following fees:

1. A security deposit for the return of textbooks, materials, supplies, or equipment, and may require pupils to furnish personal or consumable items. A use charge may be made when the "textbook" return has had an undue amount of wear.
2. Admission fees or charges for extracurricular or noncurricular activities where attendance is optional.
3. Fees or premiums for any authorized student health and accident benefit plan.
4. Fees for personal physical education and athletic equipment and apparel. Any pupil may provide his own equipment or apparel if it meets reasonable health and safety standards established by the board.
5. Fees in any program where the resultant product becomes the personal property of the pupil.
6. Fees for behind-the-wheel drivers education instruction.
7. Other fees and charges permitted by statute.

N.D.C.C. § 15-43-11.2 does not authorize a school board to charge a fee for schoolbus transportation. N.D.C.C. § 15-34.2-06.1 permits school districts to charge a fee for transporting students, however that provision is limited to nonreorganized school districts. The North Dakota Century Code does not authorize a school board in a reorganized school district to charge a transportation fee.

In Kadrmass v. Dickinson Public Schools, 108 S. Ct. 2481 (1988), the Kadrmass family argued that N.D.C.C. § 15-34.2-06.1 violates the equal protection clause of the fourteenth amendment because it permits user fees for bus service only in nonreorganized districts. The supreme court rejected the Kadrmass family's claim that the distinction drawn between reorganized and nonreorganized districts is arbitrary and irrational and upheld the constitutionality of the statute. Id. at 2490-91.

Therefore, it is my opinion that the New Salem school district, a reorganized school district, is not authorized to charge a transportation fee.

I trust that this discussion has satisfactorily answered your inquiry.

Sincerely,

Nicholas J. Spaeth

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