

**OPINION
46-215**

July 25, 1946 (OPINION)

SCHOOLS

RE: Board of Education - Power to Hire Teachers by Year - 15-4704

Your letter of July 23, 1946, addressed to this office has been received and contents noted.

You submit two questions upon which you desire the opinion of this office, towit:

1. Is it legal for a school board in the state of North Dakota to hire teachers on a twelve months' basis when it is expressly planned that the three months during June, July, and August, the teacher or teachers would render service in behalf of the Dickinson Recreation Association. The teachers would be paid by the Board from district funds but during the nine months of the school year they would be rendering services in the school to school pupils, and during the summer months they would be rendering services to the youth of the community but under the auspices of another organization.
2. Would the Board of Education in the State of North Dakota be permitted to subsidize recreational activities by direct contributions in money from the district treasury to the Dickinson Recreation Association? Presumably, the funds would be earmarked for the use of children and youth in the community. It appears to us that there may be a few points involved that might have a bearing on these services.
 - a. Is it possible that the monies received from the state (state apportionment, high school tuition, etc.) would have any bearing in the allocation of funds, directly or indirectly for a recreational program?
 - b. Would monies from taxes in the rural area outside of the city of Dickinson have any bearing on the expenditures of district funds for strictly recreational purposes in the city."

I shall endeavor to answer your questions in the order submitted.

1. Section 15-4704 of the North Dakota Revised Code of 1943 defines the school year as beginning on the first day of July and closing on the thirtieth day of June of the following year. The budget and levy are based upon the school year.

Under the powers and duties of the board of education of a special school district, as prescribed by section 15-2908 of the 1943 Revised Code, such board is required to keep the schools open not less than seven months nor more than ten months in any year.

I see no reason why the board of education may not pay a teacher on a twelve months' basis. For instance, a teacher is hired to teach for a term of nine months for \$1,800. The contract may contain a stipulation to the effect that \$50. a month shall be withheld from each of the nine months which would amount to \$450., and that the said sum may be paid during the time between the expiration of the nine months' period and the end of the school year. However, such sum is paid the teacher for his services as a teacher and not for any extra services performed for any other organization.

Using the same illustration, the board would not have the authority to pay the teacher \$150. a month for nine months for his teaching services and pay his \$150. a month for three months for performing services for another organization, such as the Dickinson Recreation Association. The school board has only such powers as are granted by the statute, and would have no right to expend the school funds except for purposes incidental to the operation and maintenance of the schools of the district.

2. What we have said in answer to your first question would also apply to your second question. The board of education has no right to subsidize recreational activities by direct contributions from the funds of the district. The fact that some of the funds are received from the state through apportionment, high school tuition, and other sources, would be immaterial because the funds so received may be used only for the maintenance and operation of the schools in the district. The fact that part of the school funds is secured from taxes in the rural area outside of the city of Dickinson would not in any manner change the situation, if the rural area outside of the city is a part of the Dickinson school district.

The views expressed herein are based upon the assumption that the Dickinson Recreation Association is an organization independent of the school activities of the Dickinson school district. Undoubtedly, the recreational facilities provided by this association would be of benefit to the pupils of the Dickinson school district, but the board of education would not have authority, by law, to include in its annual levy and budget the expenditure of maintaining such recreational organization.

NELS G. JOHNSON

Attorney General