

SCHOOL FEES

With the start of every school year, the issue of legal school fees is raised. In July 2004, the Attorney General issued his latest opinion, Letter Opinion 2004-L-46, on appropriate school fees. In his opinion, Attorney General Stenehjem reaffirmed that a program under the effective management of a school district entitles the district to receive state financial aid and that no fees may be charged for courses for which credit is given. In an opinion in 1990, the Attorney General determined “[a] school generally may not charge a fee for a course for which credit is given. Nor may a school charge for education, regardless of whether credit is given, that is a core subject” (N.D.A.G. 90-19).

The current opinion proffered as the “usual and accepted meaning of ‘extracurricular’” the following definition: “not falling within the scope of a regular curriculum; specifically: of or relating to officially or semiofficially approved and usually organized student activities (as athletics) connected with school and usually carrying no academic credit.”

Under the statute a school board may:

- a. Require that a student pay a security deposit for the return of textbooks, materials, supplies, or equipment.
- b. Assess a student a use charge if a textbook or other item covered under subsection 1 has received undue wear.
- c. Require that a student furnish personal or consumable items.
- d. Require that a student pay an admission fee or other charges for extracurricular or noncurricular activities if the student's attendance is optional.
- e. Require that a student pay a fee or a premium for any authorized student health and accident benefit plan.
- f. Require that a student pay a fee for personal athletic equipment and apparel; provided the board shall allow a student to use the student's own equipment and apparel if it meets reasonable health and safety standards established by the board.
- g. Require that a student pay a fee in any program which generates a product that becomes the personal property of the student.
- h. Require that a student pay a fee for behind-the-wheel driver's education instruction.
- i. Require that a student pay a fee for goods, including textbooks, and services provided in connection with any postsecondary level program or any program established outside regular elementary, middle school, or secondary school programs, including career and technical programs, and adult or continuing education programs.
- j. Require that a student pay a fee for the use of a musical instrument owned or rented by the school district, provided that the total fee payable by the student for a school year does not exceed the annual rental cost to the district or the annual depreciation plus actual maintenance cost for the instrument.
- k. Require that a student pay any other fees and charges permitted by statute.

The penalty for assessing fees not specifically allowed in the law is outlined in subsection 6 of the law: “If a board charges fees not authorized by law and refuses to discontinue the charges when directed to do so by the superintendent of public instruction, the superintendent shall withhold the per student and transportation aid payments to which the district is entitled for each student charged an unauthorized fee” (NDCC 15.1-09-36(6)).

Opinions issued by the Attorney General on the school fees issue can be accessed at <http://www.ag.nd.gov/Opinions/Opinions.htm>. Opinions include the following:

1. Attorney General Opinion 81-109
2. Attorney General Opinion 90-11
3. Attorney General Opinion 90-19
4. Attorney General Opinion 2001-L-29
5. Attorney General Opinion 2004-L-46

The Department receives queries about fees from many sources. As a general rule, our resultant action will be to call the superintendent to confirm or refute the report. We then ask for that confirmation or denial to be put into writing. If a school is charging an unauthorized fee, we require that the fee be refunded by a date specified. We feel this protects the school from unsubstantiated reports, provides concrete evidence that the school is charging only authorized fees, and allays rumor if subsequent charges are reported.