

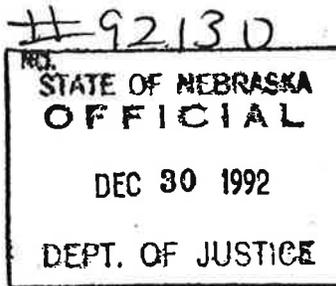


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DATE: December 23, 1992
SUBJECT: School Funds. Enrollment Option Program
REQUESTED BY: Joe Lutjeharms, Commissioner of Education
WRITTEN BY: Don Stenberg, Attorney General
 Harold Mosher, Senior Assistant Attorney General

You have asked four (4) questions which pertain to funding the Enrollment Option Program. Each is hereinafter discussed.

When a local board of education is not authorized by a majority of the votes cast at any annual or special meeting to contract with the board of any neighboring public school district or districts for the instruction of all or any part of the pupils residing in the first-named district in the school or schools maintained by the neighboring public school district or districts, is there any other legal authority to accomplish the same result?

The tenor of your question reflects the procedures stated in Neb. Rev. Stat. § 79-486 (Supp. 1992). There are other statutes which may accomplish the same result, subject to the conditions stated therein. See, for example, Neb. Rev. Stat. § 79-478 (1987) and Neb. Rev. Stat. § 79-3359 (1987).

Can a school district contract a certain class of students (such as 7th and 8th graders) to another district by any other method than specified in Neb. Rev. Stat. § 79-486 (Supp. 1992)?

Yes. See Neb. Rev. Stat. §§ 79-478 and 79-3359 (1987).

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If students who were not eligible to be Enrollment Option students because of the 79-3403 limitation were treated as such by the resident and option districts, can the option district recover tuition costs from the resident district?

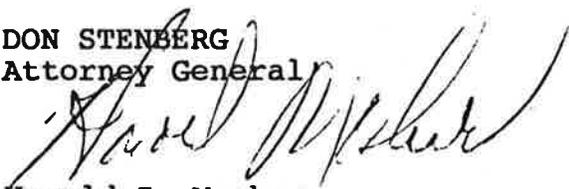
There are insufficient facts given for us to answer this question. For example, who authorized this transaction and by what authority.

If the option school district received state aid payments for students who were ineligible to be option students, must it refund to the State those funds for which that district was not entitled?

This question assumes the students are ineligible to be option students. If that is in fact correct, the school district should refund to the State Department of Education those funds for which that district was not entitled. If the school district refuses to do so, the State Department of Education could, in some cases, deduct the funds paid a school district on account of ineligible student(s) from the payments otherwise due the school district pursuant to Neb. Rev. Stat. § 79-3415 (Supp. 1992). Before the last mentioned course of action is taken, we ask that you first discuss the same with this office.

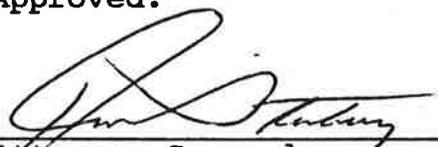
Very truly yours,

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Approved:



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20-190-3