Official Opinion No. 82-18, Dances in Public School Buildings

April 5, 1982

Mr. Robert A. Warder
Attorney at Law
516 Fifth Street
Rapid City, South Dakota 57701

Official Opinion No. 82-18

Dances in Public School Buildings

Dear Mr. Warder:

You have requested an official opinion from this office in regard to the following factual situation:

FACTS:

The Wall School District No. 51-5 has been contacted by various entities to use one of the school facilities at Wasta for public or private dances.

As attorney for the Wall School District 51-5, you have asked the following question:

QUESTION:

May a school district allow use of its facilities for conducting a public or private dance pursuant to SDCL 13-24-20?

SDCL 13-24-20 provides:

The school board may rent or grant the use of school facilities or of any land belonging to the school district for any purposes which it may deem to be advisable as a community service for such compensation as may be determined by it, provided that such use shall not interfere with school activities. Any person or persons or public body so using any such school facilities or land shall be responsible to such school district for any and all damages that may be caused by reason of such use or occupancy. They school district shall not be held liable for any suit for damages which might arise as a result of such use or occupancy.

The statute set out above would appear on its face to allow the school board to rent or grant the use of school facilities for any purpose the board deems advisable as a community service; however, as you indicated in your inquiry there are two prior opinions of this office stating that 'schoolhouses ought not to be used for dances.'

The most recent opinion, 1949-50 A.G.R. 294, is a mere reiteration of 1935-36 A.G.R. 182 and an extention of its holding to independent school districts. In my opinion, both of these prior opinions are obsolete and do not accurately reflect the present law in this state.

The 1935-36 Opinion is bottomed upon three contentions. First, the then attorney general was of the opinion that ch. 334 of the Laws of 1921 would require licensing of the schoolhouse as a dance hall were dances to be held in the schoolhouse. SDCL 42-4-1 as enacted in 1921 provides:

A public dance hall, as the term is used in this chapter, shall be construed to mean any place or space open to public patronage in which dancing, wherein the public may participate, is carried on, and to which admission may be had by the public, by payment either directly or indirectly of an admission fee or price for dancing, for the personal gain or profit of the person, firm, or corporation conducting, maintaining, or operating such public dance hall.

Following the issuance of the Attorney General's Opinion in 1935, the _Legislature enacted SDCL 42-4-2. The statute provides:

Nothing in this chapter shall be construed to apply to dances conducted, maintained, or operated as a community enterprise and without personal profit to any person, firm or corporation, where the admission fee charged does not exceed the cost of operating, maintaining or conducting such public dance.

Clearly, the exception established in the statute set out above removes one basis for the 1935-36 Opinion.

Second, the opinion expresses the belief that to adapt a schoolhouse for dancing purposes would require removal of seats and other changes involving the possibility of damage to school property. SDCL 13-24-20 in its present version holds any person or persons using the school facility is responsible for all damages that may result. Accordingly, the second concern has been legislatively addressed and it removed as a basis for the problem.

Third, the then attorney general held a personal belief that schoolhouses could lawfully be used only for educational purposes including such activities as singing, literary societies, political and other meetings for moral purposes. Since the Legislature has delegated the task of determining what purposes are community services to the local school board, it is now inappropriate for this office to interject its own opinion on the matter.

Finally, in addressing the scope of activities a school district may become involved in it is instructive to review the provisions of SDCL ch. 42-2 _entitled COUNTY, MUNICIPAL AND SCHOOL DISTRICT RECREATION SYSTEMS. SDCL 42-2-1 provides:

Any county, municipality, or school district may operate a system of public recreation and playgrounds, and for such purpose may acquire, equip, and maintain land, buildings, or other recreational facilities, and expend its funds therefor.

Since the Legislature in 1937, subsequent to the 1935-36 Opinion, provided a broad grant of authority to school districts to operate public recreation programs, it would certainly require an extremely restrictive interpretation by this office to conclude that the phrase 'public recreation' does not include dances.

Accordingly it is my opinion that school districts may grant use of their facilities for dances and no dance hall license is required so long as the grant of use falls within the exception created by SDCL 42-4-2. Anything in 1935-36 A.G.R. 182 or 1949-50 A.G.R. 294 to the contrary is hereby superseded.

Respectfully submitted,

Mark V. Meierhenry
Attorney General