

OFFICIAL OPINION NO. 95-06, Fees for Participation in Extra Curricular Activities.

November 28, 1995

Mr. James McCulloch  
Attorney at Law  
P.O. Box 335  
Vermillion, SD 57069-0335

**OFFICIAL OPINION NO. 95-06**

Fees for participation in extra curricular activities.

Dear Mr. McCulloch:

On behalf of the Vermillion School District, for which you serve as counsel, you have requested an official opinion regarding the following factual situation:

**FACTS:**

Vermillion School District No. 13-1 is exploring alternative revenue sources to fund its extra curricular programs, which you indicate likely will experience cuts due to a property tax freeze, the new school aid formula and projected budget reductions over the next two or three years. One option being explored is charging high school students a fee or fees to participate in elective extra curricular activities occurring before or after the normal school day, for which no academic credit is to be given, and using free and reduced-fee lunch program guidelines to insure that economic status will not preclude equal access to the activities for all students.

Based on the foregoing factual situation, you have asked the following:

**QUESTION:**

Does charging a fee for participation in extra curricular activities occurring before or after the normal school day, and for which no academic credit is given, violate the South Dakota Constitutions or state statutes?

**IN RE QUESTION:**

As far as I am aware, South Dakota schools have traditionally not charged a fee for participation in extra curricular activities. It is certainly appropriate for the school district to be concerned about its authority for charging such a fee, particularly where there is little or no historical precedent for the fees. You appropriately observe that such fees might run afoul of the South Dakota Constitution, Article VIII, section 1, which provides as follows:

The stability of a republican form of government depending on the morality and intelligence of the people, it shall be the duty of the legislature to establish and maintain a general and uniform system of public schools "wherein tuition shall be without charge, and "equally open to all; and to adopt all suitable means to secure to the people the advantages and opportunities of education.

(Emphasis supplied.) It is plain under this section that there could be no charge of any kind for any school activity or course of study that would lead to academic credit. Extra curricular activities which do not lead to academic credit are a more difficult issue under this constitutional provision and one that, for the moment, need not be addressed.

A South Dakota statute also directly governs this matter, and does so explicitly and by negative inference. SDCL 13-28-5 provides as follows:

The privileges of the public schools of any district shall be free to all persons of school residence within the district until they complete the secondary school program or until they reach the age of 21.

This statute is broader than the constitutional provision. While the Constitution states that tuition shall be free, the statute states that "privileges of the public schools" shall be free.

Another factor in this matter is the well known rule that school districts, as well as other subdivisions or public corporations of state government, may do only those things they are authorized to do, and may exercise only such powers and exercise them only in such manner, as the legislature has provided. "See, e.g., "Blue Fox Bar, Inc. v. City of Yankton, 424 N.W.2d 919 (S.D. 1988). With regard to school districts, it is apparent that the legislature realized the existence of this rule, and has legislated with it in mind. The legislature has gone so far as to allow, specifically, for the charging of a fee for parking. SDCL 13-24-21. Apparently, the legislature perceived that even a fee for parking would not be permissible without specific statutory authority for it.

Further, my search of the South Dakota Code has not revealed any statute that would permit the charging of a fee for extra curricular activities. I must, therefore, conclude, on the basis of South Dakota statutory and case law, that the school district lacks the power to charge such a fee under South Dakota statute.

The answer to your question is "no." It is possible that a statute could be drawn to allow certain fees, provided the constitutional restraint is not violated. However, under the existing statute, no fees can be charged.

MWB:CME:mas