



1961

Digest of Attorney General Opinions

North Dakota Law Review

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BENCH AND BAR

DIGEST OF ATTORNEY GENERAL OPINIONS

CHILDREN'S HOME — DUTY OF STATE TO PROTECT FAITH

December 10, 1960

May a children's home licensed under Section 50-11 of the Code establish a policy of requiring incoming children to be trained in the Lutheran faith?

The opinion states: Children placed in the home who are not of the Lutheran faith must not be trained and instructed in that faith; rather, they must be trained and instructed in their own faith. Therefore, if the home in question wishes to keep children who are not of the Lutheran faith, and if it does not wish to hazard its license, it will not subject non-Lutheran children to Lutheran training and instruction.

TAX DEEDS — EXTINGUISHMENT OF LIENS

December 19, 1960

When a county obtains a tax deed to city or village lots for both delinquent general taxes and delinquent special assessments is the lien for special assessments extinguished?

The opinion states: Our conclusion is that the lien for special assessments is extinguished and that no further installments of the assessment are collectible whether or not such installments have been certified to the county auditor by the city auditor or village clerk, as provided in section 40-24-11 of the Code.

This opinion overrules two earlier opinions on the subject.

SCHOOL DISTRICTS — WHAT CONSTITUTES RESIDENCE FOR TUITION PURPOSES?

December 27, 1960

The parents of the school children moved from the farm into town. They continued to farm the land and voted in the rural school district. The father was also a member of the rural district school board. The rural district maintained no schools and paid tuition to the town school district for all children from their district except the ones in question. The issue presented is the determination of what school district should pay for these children.

The opinion states: It is the actual residence of the children, not the legal residence of the parents, that determines who pays the tuition. The question of whether the children have come into a school district merely for the purpose of obtaining school privileges, thus requiring the payment of tuition, is a question of fact which must be decided by the school board from all the evidences available.

COUNTY HEALTH BOARD — HOSPITALIZATION
OF AN ALCOHOLIC

January 25, 1961

May a county health board order the involuntary hospitalization of an alcoholic or drug addict?

The opinion states: Section 25-03-02 says alcoholics and drug addicts are to be admitted to the state hospital by voluntary admission. Nevertheless, we do not believe that they are restricted completely to voluntary admission. We believe Section 25-03-11 which deals with the involuntary hospitalization of the mentally ill can be construed to include alcoholics and drug addicts.

MEMORIAL FUNDS — WHAT CONSTITUTES
AN APPROPRIATE MEMORIAL

January 30, 1961

Is the construction of an athletic field a suitable memorial under chapter 11-23 of the Code?

The opinion states: It would seem that the proposed erection of a recreational area and a building as substantial as this one is planned to be would be an appropriate memorial. We assume that it will be presentable in appearance and that a memorial plaque will be placed thereon that will comply with the statute.

MUNICIPALITIES — REGULATIONS OF TRANSIENT
BUSINESS

February 2, 1961

Can a municipality pass an ordinance requiring a license and fee from a farmer who is peddling produce within the municipality?

The opinion states: The Code gives the municipality broad powers in these respects but also states that such powers cannot be used to restrain peddlers offering products grown or raised with-

in the state. However, the municipality has the power to require licensing and inspection of dairy products under the police power. It must be borne in mind that the purpose of the licensing ordinance must actually be for the public health and not merely a device instituted to exclude competition.

ERRATUM

In the January 1961 issue of the North Dakota Law Review appeared the article *The Uniform Rules of Evidence and the North Dakota Law of Evidence* by Leo H. Whinery. The following corrections should be made:

Page 26, line 22: "had" instead of "that"

Page 30, paragraph 1, line 2: the word "persuasion" instead of "presumption"

Page 31, paragraph 2, line 5: should read ". . . fall within Uniform Rule 14(b)."

Also in the January issue the book **PRODUCTS LIABILITY** by Louis R. Frumer and Melvin I. Friedman is shown at page 136 to be priced at \$4.50; the correct price is \$45.00.