



# bulletin

JULY 2018

Excellence in North Dakota public education through local school board governance



NORTH DAKOTA  
SCHOOL BOARDS  
ASSOCIATION  
INCORPORATED

■ VOL XLIII ISSUE 7

## In Memoriam: Richard D. Ott

On June 19, 2018, Dr. Richard Ott passed away. Rich was the third executive director and first full-time executive director of the North Dakota School Boards Association. He served in that capacity for 20 years. NDSBA will remember Rich with great fondness and appreciation, and we'd like to share his self-penned obituary:

*Greetings:*

*When this is read, I will be wherever*



*it has been determined that I should go following life in this world.*

*I was born Sept. 14, 1933, in a suburb of St. Louis, and ended up with the name Richard D. Ott, after a series of*

*Richard D. Ott served as the Executive Director of NDSBA for 20 years.*

*adoption procedures.*

*Thanks to everyone for an exciting and satisfying life. Many people, even some I didn't know, gave me so much. Thanks to all you kind folks.*

*To my cherished friends and family, I offer a huge bouquet of gratitude.*

*Special thanks to my oldest daughter, Becky, and her family, and to my youngest daughter, Joni, and her family. From the day each of you girls came along, you've been sheer delight.*

*Then there's my wife, Doris. Words can never express my appreciation for*

*all she has done for me, and for all she has meant to me. Living with her has been an ongoing courtship.*

*I've asked that there be very little commotion to mark my departure. (But I probably have little to say about that now.) However, rather than having folks take a lot of time away from work, travel a long distance, buy flowers, send cards, establish scholarships, etc., I'd prefer that you go out to a nice restaurant, enjoy a big meal, give me a positive thought and go about your lives. If you feel compelled to do something beyond this, send a donation to an animal shelter of your choice. Many of my furry friends live there.*

*May your time on Earth be as happy and rewarding as mine was.*

*Richard D. Ott*

## U.S. Supreme Court's Landmark Ruling in Union Fee Case

On June 27, 2018, the U.S. Supreme Court issued a landmark decision in *Janus v. AFSCME*. The case involved a claim brought by Mark Janus, an Illinois public employee, who challenged a union's right to collect dues and fees against the employee's will (commonly referred to as "fair share" provisions). Janus argued that it was a violation of his First Amendment rights to require him to pay union dues and fees when he was not a member of the union and

strongly opposed the positions the union took in collective bargaining and related activities. The Supreme Court, in a 5-4 decision, overruled its prior decision in *Abood v. Detroit Bd. of Ed.*, 431 U.S. 209 (1977) and held that "[t]he State's extraction of agency fees from nonconsenting public-sector employees violates the First Amendment." In other words, the Court ruled that employees cannot be compelled to pay union dues or fees against their will because doing so violates the employee's free speech rights. Justice Samuel Alito, who authored the Court's majority opinion, wrote: "Neither an agency fee nor any other payment to the union may be deducted from the nonmember's wages, nor may any other attempt be made to collect such a payment, unless the employee affirmatively consents to pay."

This decision dealt a major blow to state and local public-sector unions, who argue that they need the "fair-share" fees to offset the significant costs they incur in negotiating for better pay and working conditions, which they say benefit all employees and not just members.

So, who will the Court's ruling effect? The ruling most directly applies to all public-sector unions and public employers and employees. At the very least, it will affect the 23 states that allow unions to negotiate fair-share fees. The state of North Dakota already prohibits public-sector unions, like ND United, from charging public employees fair-share fees. Thus, it will have very little effect in our state. What is still clear, however, is that unions will still be required to represent and provide other benefits to employees who have chosen not to join them. The Janus decision clearly states that a union's duty of

*Continued on page 3*



## Convention Reminders

Resolutions must be received in the NDSBA office no later than 4:00 p.m. on **Monday, August 20**. If you are interested in serving as a convention committee member, please contact NDSBA by **Friday, August 24**.



# Legal Spotlight

## Bidding Requirements for School Boards

by Amy De Kok, NDSBA Legal Counsel

One of the most common questions that comes across my desk from school board members and their representatives is “Do we need to bid this out?” Generally, North Dakota law requires state agencies and political subdivisions of the State of North Dakota to provide notice, receive sealed bids, and publicly open bids before the entity may expend public funds. The primary public policy reasons behind this are somewhat obvious. First, as stewards of public funds, we want our public entities to get the best price for goods and services provided by the most responsible vendors. In addition, an open and fair process helps ensure our public funds are not being used to collude or improperly favor certain individuals and entities over others. In other words, everyone has a fair opportunity to provide goods and services to public entities. This article provides an overview of the various bidding requirements applicable to public school boards in North Dakota, as well as the limits and exceptions to these requirements.

The **Bulletin** is the official newsletter of the North Dakota School Boards Association. It is published twelve times each year and is mailed as third class mail from New Salem, North Dakota.

**EDITOR**

Alexis Baxley

**PUBLISHER**

North Dakota School Boards Association  
PO Box 7128  
Bismarck, ND 58507-7128

**TELEPHONE** 1-800-932-8791

**LOCAL** (701)255-4127

**FAX** (701)258-7992

**WEB SITE** [www.ndsba.org](http://www.ndsba.org)

**EXECUTIVE DIRECTOR**

Alexis Baxley, Bismarck

**OFFICERS**

**PRESIDENT**

Jim Johnson, Fargo

**VICE PRESIDENT**

Mike Lautenschlager, Berthold

**PAST PRESIDENT**

Jim Rostad, Minot

**DIRECTORS**

Kim Bernstein, Bottineau

Karl Lembke, Bismarck

Patti Stedman, West Fargo

Holly Stromsdot, Finley-Sharon

The primary section of the North Dakota Century Code addressing bidding requirements for boards of public school districts is NDCC § 15.1-09-34. That section provides that the board of a school district may not enter a contract involving the expenditure of an aggregate amount greater than \$25,000 unless the school board has given 10 days' notice by publication in the official newspaper of the district, receive sealed bids, and accepted the bid of the lowest responsible bidder. The use of the term “contract” does not require a written contract in order for the bidding requirements to apply. Rather, any agreement, whether oral or written, which involves the expenditure of \$25,000 or more, will require the board to comply with the requirements of this section. Boards need to be diligent in making sure they are adhering to the statutory bidding requirements. Those that do not may subject themselves to a lawsuit brought by an aggrieved party, such as a vendor or contractor who was not given an opportunity to bid or possibly a resident of the district who pays property taxes in support of the public school district. Also, boards should be careful not to engage in conduct with the intention to avoid the bidding requirements in North Dakota law. This includes taking steps to separate expenditures or projects into phases with the purpose of avoiding the statutory requirements. Indeed, section 15.1-09-34 applies to “aggregate” expenditures in excess of \$25,000.

Notwithstanding, section 15.1-09-34 includes several express exceptions to

the standard bidding requirements. For example, the bidding requirements do not apply to the expenditure of funds in exchange for personal services of district employees. In other words, regardless of the amount of wages paid to district employees (certified and classified alike), the board is not required to follow the bidding requirements in section 15.1-09-34 when hiring employees. Also, the board's purchase of a used motor vehicle primarily used for the transportation of students is exempt from the bidding requirements. A “used motor vehicle” as defined by statute means “a motor vehicle that has been previously owned or leased and which has an odometer reading in excess of [18,000] miles.” The board is also not required to comply with the bidding requirements in section 15.1-09-34 when contracting for school transportation services. That process is addressed in NDCC ch. 15.1-30, which contains an initial requirement to provide notice and obtain bids for such services. Once the contract is awarded to a contractor, however, the contract may be renewed by direct negotiation. Even so, if such a contract is to be renewed by direct negotiation, the board is required to publish notice in the official newspaper of the district, at least 30 days before renewal, and must make a good-faith effort to obtain at least two written quotes for the contract. There are additional requirements tied to this process that are set forth in section 15.1-30-11.

I probably receive the most inquiries regarding bidding requirements associated with the construction and improvement of school facilities. Section 15.1-09-34 expressly exempts these expenditures from its bidding

*Continued on page 3*

## Notice: NDSBA Director Openings

NDSBA is seeking candidates to fill upcoming openings in the Southwest and Northeast Director positions on our board. We will be mailing application forms to all school board members in the southwest (McKenzie, Golden Valley, Billings, Dunn, Mercer, Oliver, Stark, Morton, Slope, Hettinger, Grant, Bowman, Adams, Sioux, Burleigh, Kidder and Emmons Counties) and northeast (Towner, Cavalier, Pembina, Benson, Ramsey, Walsh, Eddy, Nelson, Grand Forks, Foster, Griggs, Steele, and Trail Counties) for the election held at our Annual Convention on October 25-26.

NDSBA also wishes to thank current Vice President Mike Lautenschlager and Past President Jim Rostad for their service. Mike was not reelected this spring and will be stepping down from the NDSBA Board of Directors following the Annual Convention. As past president, Jim's term will end following the Annual Convention as well.

## ■ Legal Spotlight

*Continued from page 2*

requirements. Rather, the requirements set forth in Chapter 48-01.2 apply in those instances. Section 48-01.2-01 contains a long list of defined terms, which are important to determine whether a certain project (whether new construction, an update, or a repair) must comply with the requirements of Chapter 48-01.2. Section 48-01.2-02.1 provides that the threshold for bidding construction of a public improvement is \$150,000. In addition, the threshold for procuring plans, drawings, and specifications from an architect or engineer for construction of a public improvement is also \$150,000. Thus, whether the bidding and other requirements apply depends in part on whether the subject project constitutes “construction of a public improvement.”

## Business Manager Certification Program Honors Students



On Friday, June 22, 2018, forty-one North Dakota school business managers were honored at the North Dakota Heritage Center for completing or being recertified in the North Dakota School Business Manager Certification Program. Seven of the sixteen new business manager graduates received the mastery designation—the program’s highest distinction. School board members and superintendents joined family members and friends in celebrating this significant professional accomplishment. Guest speakers included NDSBA President Jim Johnson, North Dakota Association of School Business Managers President Laura Dokken, and Superintendent of

Public Instruction Kirsten Baesler.

Established in 2013, the North Dakota School Business Manager Certification Program provides business managers with practical education and training to help them successfully perform their duties and meet statutory and regulatory responsibilities. The program, which is offered over a period of two years, requires on-site and electronic participation. Courses are taught by superintendents, business managers, school district personnel, and state officials with expertise in specific areas.

The certification program is administered by the NDSBA, in conjunction with the North Dakota Association of School Business Managers.



*Left to right:* Patty VerDoux, NDSBA; Rose Hurt, Killdeer; Michelle Johnson, Fessenden-Bowdon; Kim Dressler, Richardson-Taylor; Maria Dunlap, Leeds; Kendra Dockter, Richland; Crystal Rocketship, WilMac Special Education; Janae Reynen, Eight Mile; Rosalani Lucy, Powers Lake; Jenna Kirchmeier, Wilton; Sandra Allery, Dunseith; Melissa Beutler, Sheyenne Valley Special Education; Deanna Kville, May-Port CG; Theresa Knutson, Warwick; Deyan Junker, New Town; Tammy Lindahl, Lewis and Clark; Cara Schumacher, Hazelton-Moffit-Braddock; Christi Schaefbauer, University of Mary; Andrea Lauer, McClusky; Jodi Germundson, Williston; Rebecca Duben, NDSBA

It may seem like an easy determination, but it is an important initial box to check to make sure the board is following the correct bidding procedures. To this end, section 48-01.2-01(4) defines “construction” as “the process of building, altering, repairing, improving, or demolishing any public structure or building or other improvement to any public property.” It expressly excludes the routine operation or maintenance of existing facilities, structures, buildings, or real property. Section 48-01.2-01(21) defines “public improvement” as any improvement undertaken by a governing body for the good of the public and which is paid for with any public funds. A particular project must meet these definitions, as well as the threshold requirement, in order for Chapter 48-01.2 to apply. If it does not, but it still involves the expenditure of an amount greater than \$25,000, then the

board would be required to follow the bidding procedure set forth in section 15.1-09-34.

It is important to be aware of the various statutory requirements to ensure compliance. Even if no statutory bidding procedures apply, boards often have policies that contain their own requirements or they voluntarily follow the simple bidding procedure set forth in section 15.1-09-34 as a good practice. Regardless of the situation, please feel free to contact NDSBA staff for guidance.

## ■ US Supreme Court Landmark Ruling

*Continued from page 1*

fair representation is a necessary part of the authority that it seeks when it chooses to be the exclusive bargaining representative. Therefore, the union has a duty to represent non-members and members alike, even though non-members cannot be required to pay union fees.

Because North Dakota law prohibits the assessment of “fair-share” fees, NDSBA recommends that all districts review your practices and records to ensure that an employee has expressly authorized union fee/dues deductions. Obtaining an employee’s signature or using a verified electronic signature application is recommended.

## NDSBA and ND DPI New Board Member Workshop Still Accepting Registrations

The North Dakota School Boards Association and the North Dakota Department of Public Instruction are partnering to host a one-day workshop for school board members. The workshop will be held on **July 27, 2018**, from 10:00 a.m. to 2:15 p.m. at the State Capitol in Bismarck. Lunch will be provided on-site for a networking session from 12 p.m. to 1 p.m. The event is aimed at newly elected board members, but all board members are welcome to attend. This is a great opportunity for new board members to get a crash course in state requirements early in their tenure and a great refresher for returning board members. There is no fee to attend this training.

*Continued on page 4*

**NORTH DAKOTA  
SCHOOL BOARDS  
ASSOCIATION**  
INCORPORATED  
PO Box 7128  
Bismarck ND 58507-7128

PRE-SORTED  
STANDARD  
U.S. POSTAGE  
**PAID**  
PERMIT NO. 6  
NEW SALEM, ND  
58563

**RETURN SERVICE REQUESTED**

## ■ NDSBA and ND DPI Workshop

*Continued from page 3*

Topics discussed will include school finance, state reporting, instructional waivers, AdvancED, ESSA updates, and innovative education updates. This training does NOT meet the requirements for the new board member training mandated by state law but will provide board members with basic knowledge on many topics.

Board members can register by completing the form available at <https://www.surveymonkey.com/r/WQFPD2N>.

## Threat Assessment Registration Still Open for Rugby Training

The North Dakota School Boards Association and the North Dakota Insurance Reserve Fund have partnered to offer threat assessment training to member districts. This training will enable your district to establish a plan to identify, evaluate, investigate, and respond to threats with the goal of preventing threats from being carried out in our schools. Participants will participate in a mock investigation and receive support materials to take home. The training uses a team approach and encourages collaboration with local agencies. The training will be led by Jeff Azure, retired law enforcement officer and school resource officer.

**The Rugby training is still accepting registrations.** It will be held on August 10 from 1:00 to 5:00 p.m. To register, please print and complete the application form available at [www.ndsba.org](http://www.ndsba.org) under QUICK CLICKS.



**mark your calendar**

**DPI & NDSBA Workshop for New School Board Members**

July 27, 2018  
State Capitol, Bismarck

**2018 NDSBA Annual Convention**

October 25-26, 2018  
Ramkota Hotel, Bismarck

**2019 NSBA Annual Conference**

March 30-April 1, 2019  
Philadelphia, Pennsylvania

**2019 NDSBA Annual Convention**

October 24-25, 2019  
Ramkota Hotel, Bismarck