

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION  
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2062

2005 SENATE EDUCATION

SB 2062

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2062

Senate Education Committee

Conference Committee

Hearing Date 1/18/05

Tape Number	Side A	Side B	Meter #
1	x		180-5940
1		x	0-1850
Committee Clerk Signature <i>Patty Wilkins</i>			

Minutes: Relating to powers of the board of education of the city of Fargo.

**Senator Layton Freborg**, Chairman called the meeting to order on SB 2062

**Testimony in support of the Bill:**

**Senator Judy Lee**, introduced the bill. She is from district 13 which is most of West Fargo. This bill is intended to provide some clarification. I am sure you are all aware that the Fargo and West Fargo school districts not only boarder one another but so do the communities rub shoulders.

There was a ? raised by a city employee in Fargo about whether or not the school district of West Fargo had the right to build a school within city boundaries of Fargo. To clarify what has been in practice actually this bill is brought to you today, the intention is that the school district of West Fargo would have control over its facilities, and that the school district of Fargo would have control over its facilities, and delete any reference to the city of Fargo having control over the Fargo school district facilities as well. That's the purpose of the amendment, there was a ? raised

by the Fargo school district administrators about weather or not it's clearly stated that the city of Fargo would not have control over their school districts and truly all other districts.

**Representative Koppelman** : From district 13 as well. This bill cleans it up. I do favor the bill, as Senator Lee mentioned the clean up will not effect current practice. I have also been led to believe that it is something that will be supported by the school districts involved, as you know school districts and cities are completely separate and distinct. Political subdivision, their boundaries don't necessarily follow the same lines. That's really what this bill is all about.

**Senator Flakoll** : With millions of \$'s being involved, do you know of any joint meetings that have gone relative to this bill, between the two school boards?

**Rep. Koppelman** : Not aware of any meetings like that, however the superintendent of West Fargo schools and one of the school board member here in this room, they would be able to answer you more specifically. To point out though that this bill, as Sen. Lee said really will not effect anything in terms of current practices, so it shouldn't effect \$1.00 much less millions of dollars. What's currently happened is that, has happened to many other states, ND doesn't have many cities or suburbs, many metropolitan areas. Most of the time it is just one city that just grows larger. You get another state like MN with the cities of Minneapolis and all the other suburbs, and when that happens, overlaps occur. There are many cities in Minneapolis suburbs that don't even have a school district that carries the same name, and municipalities. My hope is that we can cooperate to straighten this out as much as possible and I am confident that the leadership of both school districts really want the same.

**Senator Flakoll** : Is this legislation required, because of some changes that were made with HB 1180 in the 70's? Did they set up some things that precluded this from happening?

**Rep. Koppelman** : I believe what happened, and you are very astute, on the # of that on the HB.

I'll trust that I know which one you are talking about. I believe what happened on that piece of legislation is that school district boundaries were essentially set in place as they existed. What has happened since then, city growth has happened in a way that's different from existing boundaries. I would submit one of the main reasons for that because of extra territorial zoning and annexation authority of cities. Which is a whole separate issue, that we will not get into. What this does it creates differences in the way cities grow and the way school districts operate. The problem and if it is a problem, not sure that it is, but the situation is not that WF has infringed upon anything or that the WF school district has grown into the city of Fargo which is part of the school district. What has happened is the City of Fargo has expanded into territory that has always been part of WF school district. That is why we have the strange overlaps.

**Senator Freborg** : Do you have any idea if the amendments were drafted in conjunction with the people from the Fargo school district?

**Rep. Koppelman** : I apologize, I haven't even seen the amendment. I am sure Mr. Cheney should be able to answer that..

**Dr.Charles Cheney** : Superintendent of the West Fargo School, there is a conflict in the law as it is written. This would clear things up with this amendment.

**See attached: written testimony**

**Senator Seymour** : When did you realize you had a problem and you needed legislation to take care of it.

**Dr. Charles Cheney** : We received a letter from the Fargo Public School District, back in May of 2004. That suggested in their review of statues that there was a conflict that needed to be rectified.

**Senator G. Lee** : Your amendment is slightly different, are you O.K. with Senator J Lee's amendment?

**Dr. Charles Cheney** : Our intent is the same, Senator J. Lee has worked with LC. We would agree that it is as workable as ours, with examination.

**Senator Flakoll** : Is it accurate, that the residence of who are in the WF school district, pay less than either Fargo, or WF in terms of property taxes, so if you are a resident living in WF school district, VS if you Fargo going to Fargo school district, or WF in the WF school district, the combined totallitary of the, all property taxes are less.

**Charles Cheney** : I am taking your ? as meaning, are the school taxes for those property owners who live in the WF school districts, are their taxes less?

**Senator Flakoll** : Over all city taxes and all property taxes, that go toward the school.

**Charles Cheney** : Again Senator Flakoll I not sure what you are saying.

**Senator Flakoll** : New ?, What input would Fargo, with this bill if it were to go forward, what controls would they have in terms of locations, size, naming of the school, whatever, if there was to be a school to be built within the city limits of Fargo?

**Charles Cheney** : We own a piece of property that is currently in the city of Fargo and in our school district. It happens to be in a development called Osgood, we are proposing that there will be a time soon, that we will build an elementary school there because the neighborhood is growing quickly. If this bill is amended and adopted as suggested, WF school board will have the

authority to name, plan, build and operate that school at that location. This school will be in the city of Fargo.

**Senator Flakoll** : Any idea when this will be built?

**Charles Cheney** : We are currently going to go to the voters in our district, on a bond issue on February 15th of this yr. that bond issue will suggest that we build a school in the Eagle Rund Belt which is west of (meter 1944) that we propose, will begin construction on that in 2006 and open in the Fall of 2007. The Osgood elementary school will follow when the critical mass of students in that area, dictates that I would estimate to you that it is anywhere from 4-6 yrs away. That area is growing so quickly, that it is difficult for us to estimate and to realize the growth that is occurring there.

**Senator Flakoll** : In reference of the letter you received back in May of 2004 from Fargo, visiting about the problem. Where there any joint meetings between the school board members on the issue?

**Charles Cheney** : There were not. I will explain that. The tone of the letter and the press pick up of this particular issue, at the time that it occurred. The analysis of this issue by our board its attorney and legislators who live in our district have been very supportive of our district. A fix was apparent, and we recommended and formed legislation to fix it. Quote from the letter: Depending on your position, perhaps we could explore resolution in this matter together. Our position was that if we needed to fix the bill, lets fix it. It's easy to do, all we need to do is suggest a reasonable change that doesn't hurt the Fargo district. So in our case, our board, our attorney, some of legislation delegation, simply felt that it was best that we make some changes and we have.

**Senator Flakoll :** There seems like, there even seems to be a little discrepancy amongst people providing amendments. Between what Senator Lee provided and what the district may be providing. Will we get to a point here where we are pretty comfortable within at least the WF districts, as far as the amendments, are you comfortable in that?

**Charles Cheney :** I think that you will hear testimony from representatives of the Fargo school district. We shared this bill with the superintendent of schools and the board of education of the city of Fargo. The Fargo school district, six to eight weeks ago, we've had conversations at the superintendent level, as it relates to the bill and it's intent and the impact on both districts. We believe that, our amendment and the other amendment tend to do the same thing, that we would do no harm to the Fargo school district in the operation of its own building in its own district. We have no intention for this to happen, essentially we figured out that our original bill did do some harm to them and were interested in considering an amendment that would not harm them. This is what Senator J. Lee, and we have presented and I think that you will find that Fargo district may have their own suggestion.

**Angela Korsmo :** A member of WF school board, totally supports this bill, as amended.

**Senator Flakoll :** How many board members from WF school district are Fargo residence.

**Angela Korsmo :** I am not sure that any of them are, we do have a Harwood resident.

**Senator Freborg :** Angela however they are all residents of the WF school district, are they not?

**Angela Korsmo :** They are, they have to be residence in order to be on the board.

**Mark LeMar :** School taxes from the WF school district, I have no prepared testimony, however, I will attempt to address the ? that Senator Flakoll did ask Dr. Cheney, with regard to the consolidated mill levy. The school taxes between both schools are significantly different. The



city taxes between the city of WF and Fargo are significantly different, so as a result in the city of Fargo and the Fargo school district, they pay a little bit less in terms of the city tax and more in terms of the school tax. In the city of WF our residents pay more in the city tax and less in the school tax. So for those folks who happen be in the city of Fargo but in the WF school district they are benefiting that there city taxes are lower than what they would be in WF for city taxes and their school taxes are lower in the WF school district, than what they would be in the in the Fargo school district. So it is in fact true that their total consolidated mill levy they are paying less, than their counterparts who are city of WF residents, WF school district residents or city of Fargo residents, Fargo school district residents.

**Senator Flakoll :** Had I know you would be up here, I would have asked you some of these really nice ?'s. What are your thoughts in taking that third grouping, and if you want to call it making them whole, so that they would pay the same minimum as either Fargo or the lowest, whoever is Fargo or WF and using that.

**Mark LeMar :** The ? is then, how are they being made whole? So would that additional tax, then go to the city of WF or to the city of Fargo or to the WF school district, or to Fargo school district or to the state? Basically right now because their tax levies are all different, they have the advantage of lower taxes from their city and lower taxes from their school district, I would hazard a guess that if we looked at Minot or Towner or another city and school district combination out there. There are probably tax payers who are paying less in terms of their consolidated mill levy, very likely there are not many that are paying more than their consolidated mill levy than tax payers in Fargo. There is no state mandate minimum property tax that a tax payer is required to pay. As a result, every taxing entity sets its levy and the

consolidated levy is just a combination. In my mind I don't envision the less legislature has planned for that, something different happening in that area.

**Senator Freborg :** We'll send that issue over to finance and tax perhaps stay to the school issue.

**Testimony in opposition of the Bill:**

**Dan Huffman,** Assistant Superintendent of the Fargo Public School District.

see attached: written testimony

**Senator Seymour :** If I was selling building insurance in Fargo, I wouldn't go see you, I'd go see the city of Fargo because they own the school building? Is that what you are telling me?

**Dan Huffman :** At the present time all of our properties title city of Fargo for use of the schools. The piece of the statute that had been proposed to be stricken from law in the original bill draft of 2062, removed the Fargo school boards ability to manage all issues related to the use of those buildings. What we are saying in suggesting that subsection 3 be reinstated, it needs to be reinstated so that the on going ability of the Fargo school board, could care, manage and control those facilities remain in the statutes.

**Senator G. Lee :** Just reading your testimony, it seems like you are trying to bring two issues together here. One, the school board authority in the city of Fargo that is involved with this bill, and the other is the 1970's decision. Seems like there fairly distinct issues in my mind, but if this amendment were appropriate in your language, would it solve the issue that was raised in terms of the authority of the Fargo school district, and West Fargo in terms of operation of the property within their school districts.

**Dan Huffman :** Yes, I am trying to bring two issues together, we don't consider them to be very separate and distinct issues. Each of these addresses the financial stability of school districts

going forward, each of them address the authority of school districts to manage issues in our community. If our amendment were reinstated to the language or Dr. Cheney's amendment was reinstated into the original language of 2062, it would solve the short term operational issue within the statute. I have not seen Senator Lees' amendment. I cannot answer that. Yes, we are asking that this short term issue be addressed, but in context of solving the short term issue about school district authority operate school buildings within their district. We also address the long term issue about the maintenance of financial stability for both school districts with a long term also.

**Senator Flakoll :** With respect to the city infrastructure, I don't know how different things are paid for, is there a different process, from what Fargo does to what WF does? I don't quite get that part or piece of it.

**Dan Hoffman :** Dr. Cheney, Mark Lemar and I are all fortunate enough to be part of a special assessment task force for the metropolitan area in Fargo that would include Dilworth, Moorhead, Fargo, WF in the surrounding area. From the prospective of the development of city infrastructure street, sidewalks, water, sewer, flood all those kinds of issues, the two communities tend to approach that the same way. The city of Fargo doesn't use a different process, for their infrastructure development within the two school districts, it's the city of Fargo. It's special assessed to the properties as they are developed.

**Senator Grindberg:** I do agree with Mr. Hoffman as well with Dr. Cheney, that was raised by

**Senator Lee** with the ? of two different issues. I've served here 13 yrs. and I have been involved with many discussion between the school administrators in Fargo and WF over this issue, the root of the 1973 HB 1180 issue and my advise and perspective if you will, all the way along has

been, this is a local issue and needs to be worked on locally and not before the legislature again.

With perspective of the history, in some regards if you were to put this bill or change the 1973 law, you would have more people here than the Territorial Integrity Act. My point that I am trying to make, is that in my opinion does need to be worked out locally. It does have long term consequences, so I am not necessarily opposed to this bill, but I am opposed to piece milling, because there has been a lot of effort and energy that has gone on this issue and some regard or manner in the 13 yrs I have been here in the legislature. So I hope in the wisdom of this committee that we don't take a look at a piece mill approach VS what I know is coming in some other bill, a strong study resolution, Of just not legislatures but community members that really settle this once and for all so that we quit reading about it in the paper, about creating divisiveness if you will, between the two communities. This is not healthy for us, we both need to grow, this is not about in my opinion, not about school building. This is about growth, and these two communities need to grow, if the growth of Fargo and WF slows the whole state can slow. Both communities need the opportunity to grow, WF has done a phenomenal job in the last 10 yrs. primarily driven by the Sheyenne Diversion Project. In 1997 working with Senator J Lee, in political sub division, the extraterritorial zoning laws, both communities agreed to the law that are statute of allow each community to extend out. This is about a smart growth plan for both communities. You can do one of three things as I see it pass the bill, amend the bill, take a small approach to a larger issue that does need to be resolved. Work in some study resolution language, or tackle the 1973 issue in itself. I don't think anyone is willing to take that issue on this session. I have made copies of the testimony of HB 1180 of 1973, ten or fifteen minute reading at night.

This will tell you how things took place in the 70's that changed the law and the situation with both communities and where we are today.

**Senator Freborg :** I hate to tell you this, but I had the opportunity to be there.

**Senator Freborg :** I guess I heard what you said, but do we not have two separate issues here?

You perhaps were talking more about the city of Fargo and WF issue than you were about school board issues.

**Senator Grindberg :** If you were to have a map and to look at the land that we are talking about here with these proposed schools, the growth in the WF southwest part of the city of WF, it was a field three yrs. ago, wide open barley field. Today I bet there are 300 homes under construction there. Immediately south of WF where Fargo expanded to the west, didn't exist two yrs ago, it was farm fields. So if you were to take a map and look at what's going on in the growth area in these two cities and then bring in the school issue of what is the right policy, who should be able to do what. It's part of a bigger picture I think, it's not just about saying can you build here, when the communities need to look at how they are going to grow together.

**Senator Freborg :** If the parties in ? overall with time, several months at least that this has been an issue, come to the surface again, were to settle this within a couple of weeks. It would be much easier if the parties in ? were to sit down and decide what really is good in this bill. The bill is here and there is nothing we can do with it but pass it or kill it. Our recommendation when it gets to the floor the same thing will happen, either accept what's there or they'll amend it on the floor or they will kill the bill. So we have the issue and it will be acted on, it is much harder for us to see the picture that you are looking at.

**Senator Grindberg :** I wholeheartedly agree, but I also believe there is a bill coming through, through an interim committee that will have a study resolution that will attempt to address this issue as well. I am sure that will cross your chair as well.

**Senator Freborg :** I am certainly not oppose to study resolution, but in my experience, very little legislation has taken place because of interim study, as you know most bills coming out of interim committees, are either never introduced, or killed or amended radically and we don't even recognize the bill. Most of the time that happens.

**Senator Grindberg :** That is a very accurate assessment. I know conversations and again I haven't seen the language, but the approach that I have heard talked about would be very similar to the higher education round table on this issue, from local Fargo, WF, community leaders, legislators that probably is an effort for the most part is conducted in the two communities, not once every three months in Bismarck during the interim.

**Senator Freborg :** I ask you most of these ? because you are a legislator and understand where we are coming from, but in the mean time, what do we do with this bill?

**Senator Grindberg:** I am sure you will do the right thing.

**Senator Freborg :** Right or wrong we will do something.

**Senator Flakoll :** I am not quite through this yet, but when you refer to it as kind of piece milling it, what we have before us is one component of the big picture that was created here, had it not been for HB 1180, we wouldn't be here today visiting on this particular issue?

**Senator Grindberg :** I am not sure that I could answer that, that way in perspective of what 1180 intent as to where we're at today nor can I say where it will be 30 yrs. from now.

**Senator Freborg** : closed the hearing on SB 2062 (meter 5910)

**Senator Freborg** said he wanted to discuss the bill. There are about 3 amendments to consider. What should the committee do to get a better handle on this. We should not be dealing with a city issue. We need to deal with school issues. He agrees with what Senator Grindberg said, we do not need to amend this bill to help with long range planning or expansion in Fargo or West Fargo.

**Senator Seymour** said he wanted to hear from Senator G. Lee.

**Senator Freborg** said maybe we can do something constructive for both districts. (meter 10, side B, tape 1)

**Senator Erbele** said didn't Mr. Huffman agree that the amendments were acceptable.

**Senator Freborg** said he believes he did.

**Senator Erbele** said we should stick the amendments in, see how it reads and run with it.

**Senator G. Lee** said he agrees, there are two distinct issues here. One is much more complex and divisive than the intent of this bill. The issue intended to be resolved by the bill is who has authority in the city of West Fargo, nothing beyond that.

**Senator Flakoll** said we have to acknowledge the 1973 law created the environment where this issue is now being discussed. We need to look at the big picture. He would like to see good things happen between the two boards.

**Senator G. Lee** said the city of Fargo brought this issue forward. This issue goes back to statehood when the Fargo school district was given a different kind of authority than the rest of the school districts. It isn't the 1973 issue that created this one. It is a distinct issue that needs to be solved on its own.

**Senator Flakoll** said it isn't the city of Fargo, its the Fargo school district.

**Senator G. Lee** said he stands corrected.

**Senator Freborg** asked if the Fargo school board ever interfered in anything in the city of Fargo in the West Fargo school district , does the West Fargo school district have buildings in Fargo.  
(meter 361)

**Senator Flakoll** said he doesn't know of any but he may not be the best person to ask.

**Senator Freborg** said the Board of Education of Fargo now has custody and control of all public school property in the city.

**Senator Flakoll** said technically within the school district there is property.

**Senator Freborg** said for the Fargo Board of Education to have control it has to be within the city limits of Fargo. I would like to see what Fargo would say about it.

**Senator Seymour** asked about testimony referring to getting together with Dilworth, Harwood and have some joint planning.

**Senator Flakoll** said Mr. Hoffman referenced that with regard to input on school issues. He is on a board to that effect.

**Senator Freborg** said annexation will take in 2 or 3 school districts not too far down the line. We could have 5 school districts within the city limits of Fargo.

**Senator Taylor** said on the property issue, nothing has been built, they have title or commitment to the land in Osgood. The cart is before the horse a little bit.

**Senator Freborg** said our concern should be we will have more students living in Fargo in the West Fargo School District and they need to provide them an education in that area. The can't or



won't do it under the present situation. They aren't about to put in an institution that the Fargo board controls.

**Senator G. Lee** said West Fargo doesn't have buildings in Fargo yet but they bought property in Osgood to build a school and that is where the issue surfaced. Someone referenced Eagle Run which is two miles west, where they are looking at putting an elementary school, there were 16 houses there 2 years ago and today there are 260 homes and 5 apartment homes. It is blossoming and something will need to be done in terms of school buildings.

**Senator Flakoll** said he has some concerns about due process to be sure the city of Fargo would have some involvement in terms of location, size because they are responsible for electricity, sewer, emergency services.

**Senator Freborg** asked if that is different that what the Fargo school district now does.

**Senator Flakoll** said the Fargo school district is now required to do the same as any other building project, appear in front of the planning commission, ingress, regress, traffic, neighborhood issue and must be approved by the city commission.

**Senator Freborg** said the city of Fargo could require the same things from the West Fargo school board. They also have other automatic requirements because they are a school. He doesn't think its an issue. (meter 980)

**Senator Flakoll** said he has had conversations where he doesn't get that opinion.

**Senator Erbele** said he plugged in an amendment from Senator Judy Lee, from the testimony of Mr. Huffman he could compare the two. (meter 1115) ...have custody and control of all school district property and in the case of the Board of Education of the City of Fargo, have custody and

control of all public school property within the boundaries of the Fargo public school district. Its just that last line that changes a little.

**Senator Freborg** said this is insuring the Fargo school district would have control and custody of their own property within their boundaries.

**Senator Taylor** said its just those last few words and since Senator Judy Lee had hers drafted by Legislative Council, hers are likely correct.

**Senator Flakoll** recommended Senator Judy Lee, Cheney and Hoffman get together and see if the wording is acceptable.

**Senator Freborg** said he is not opposed to that, strictly the amendment. They should do it today. We will have the bill for awhile, certainly into next week. We want to do something good for everyone.

**Senator Flakoll** said it might be best for the students if there were some consolidation.

**Senator Freborg** said he agrees but the bill doesn't deal with consolidation. Schools need to consolidate on their own. He will talk to Senator Judy Lee and see if they can resolve their differences and get us one amendment drafted by council.

**Senator Flakoll** said there are no philosophical differences on the amendments.

Senator Freborg said that may be true but we want to be sure everyone is clear. If we can't see a difference, where is the controversy.

**Senator Taylor** said there is a reference to amended language in Dr. Cheney's testimony.

**Senator Flakoll** said it may take awhile, West Fargo had 2 amendments, Fargo had 1. I may come with some amendments. This could be their first opportunity to work together.

Page 17

Senate Education Committee

Bill/Resolution Number SB 2062

Hearing Date 1/18/05

**Chairman Freborg** asked the committee to keep thinking about the bill and closed the

discussion on SB 2062. (meter 1850)

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2062

Senate Education Committee

Conference Committee

Hearing Date 01/31/05

Tape Number	Side A	Side B	Meter #
2	x		3425-4160
Committee Clerk Signature <i>Patsy Wilkins</i>			

**Minutes: Relating to powers of the board of education of the city of Fargo.**

Senator Freborg : Call the meeting to ordre on **SB 2062**

More discussion on **SB 2062**

**Senator Flakoll** : Are you ready for a motion?

**Senator Freborg** : Well lets look at this, all right **Senator Flakoll**.

**Senator Flakoll**, moved to amend 2062 with the amendment titled 50104.0102.

**Senator G. Lee** second the motion.

**Discussion on the motion**

**Senator Flakoll** : This is the amendment that was drafted by legislative council that came from Dan Huffmann, finance director from Fargo school district. I will give the clerk the official ok from the Fargo and WF school districts, they had their attorney's look at it and now believe that it is the intent of the bill for this portion of it.

**Senator Freborg :** Putting it simply this puts total control of the Fargo Public School district in charge of everything within the Fargo public school district.

**Senator Flakoll :** That would be correct. Also Senator J. Lee was OK with this. I know this is just in some peoples eyes maybe including my own, just one portion of the things that need to be worked out between the two districts. I do have a resolution that is being drafted to be looking at other opportunities that exist that could be done between the two school districts.

**Senator Freborg :** Any other discussion, do you need more time?

There being no other discussion roll call was taken, **vote: 6-0-0**

**Senator Flakoll :** moved a Do Pass as amended on SB 2062

**Senator G. Lee** second the motion.

There being no othere discussion roll call was taken, **vote: 6-0-0**

**Senator G. Lee,** will carry the bill

January 17, 2005

*Old Amendment*

PROPOSED AMENDMENTS TO SENATE BILL NO. 2062

Page 1, line 10, remove the overstrike over "~~and, in the case of the~~"

Page 1, line 11, remove the overstrike over "~~board of education of the city of Fargo,~~" and  
remove the overstrike over "~~have custody and control of all public~~"

Page 1, line 12, remove the overstrike over "~~school property~~" and after "~~matters~~" insert "within  
the boundaries of the Fargo public school district"

Renumber accordingly

Date: 1/31/05  
Roll Call Vote #:

**2005 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 2062**

Senate SENATE EDUCATION Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken on Amendment moved to Amend -

Motion Made By Flakoll Seconded By Sen Lee

Senators	Yes	No	Senators	Yes	No
CH- SENATOR FREBORG	✓		SENATOR SEYMOUR	✓	
V-CH- SENATOR G. LEE	✓		SENATOR TAYLOR	✓	
SENATOR ERBELE	✓				
SENATOR FLAKOLL	✓				

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

Date: 1/31/05  
Roll Call Vote #: 2

**2005 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 2062**

Senate SENATE EDUCATION Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass as Amended.

Motion Made By Flakoll Seconded By Smilee

Senators	Yes	No	Senators	Yes	No
CH- SENATOR FREBORG	✓		SENATOR SEYMOUR	✓	
V-CH- SENATOR G. LEE	✓		SENATOR TAYLOR	✓	
SENATOR ERBELE	✓				
SENATOR FLAKOLL	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Sen. Lee

If the vote is on an amendment, briefly indicate intent:



**REPORT OF STANDING COMMITTEE**

**SB 2062: Education Committee (Sen. Freborg, Chairman) recommends AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2062 was placed on the Sixth order on the calendar.

Page 1, line 10, remove the overstrike over "~~and, in the case of the~~"

Page 1, line 11, remove the overstrike over "~~board of education of the city of Fargo;~~" and remove the overstrike over "~~have custody and control of all public~~"

Page 1, line 12, remove the overstrike over "~~school property~~", after "city" insert "within the boundaries of the Fargo public school district", and remove the overstrike over "~~and to manage and control all school matters~~"

Renumber accordingly

2005 HOUSE JUDICIARY

SB 2062

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2062

House Judiciary Committee

Conference Committee

Hearing Date 2/28/05

Tape Number	Side A	Side B	Meter #
1		xx	28-end
2	xx		0-3.7, 12-13.3
Committee Clerk Signature <i>Dawn Penrose</i>			

Minutes: 13 members present, 1 member absent (Rep. Bernstein).

**Chairman DeKrey:** We will open the hearing on SB 2062.

**Representative Koppelman:** I am happy to open the testimony on SB 2062. The bill before you, SB 2062, essentially seeks to clear up some language, which is really sort of antiquated in state law and it involves school buildings that are located within the city of Fargo. The reason that's even addressed in state law, it's my understanding that both the City of Fargo and the Fargo School District, as noted in law, the Board of Education of the City of Fargo, predated statehood and so there are some provisions in law that really don't exist for any city for the City of Fargo. The reason this is even an issue, is that with the City of Fargo rapid growth, the south and west in recent years, it has grown into much of the territory that is served by the West Fargo School District, so the City of Fargo has two school districts within it; which is not uncommon in a lot of other parts of the country, especially in urban area with suburbs and that sort of thing, but I don't know that it was ever anticipated by our founders, at the time of statehood, and so there's

a provision in the law currently, that basically says that the Board of Education for the city of Fargo, which is the Fargo school district, would have custody and control of all school property within the city. Of course, that's a practical requirement today because of the fact that two school districts reside within the City of Fargo and, of course, you would logically to expect each of those school districts to maintain the property for those districts that fall within the lines of the district, not the lines of the city. It's my understanding that both school districts agree with this bill and I would encourage a Do Pass.

**Chairman DeKrey:** Thank you. Further testimony in support.

**Dr. Charles Cheney, Superintendent, West Fargo Schools:** Support (see written testimony).

**Representative Maragos:** Is it constitutionally possible to be taxed without being able to vote on it.

**Dr. Charles Cheney:** I'm not sure if it would be appropriate for me to answer that question. I don't have a legal background. Currently that is not happening. There have been questions raised, however, by members of our community as to whether or not that might be a possibility.

**Representative Maragos:** I only ask the question because you do make the statement, and obviously I was wondering if you bothered to get an AG's opinion on that, you make the statement that they could possibly be taxed by the Fargo School District without being able to vote. I just want to know if that's possible.

**Dr. Charles Cheney:** The reference to a potential AG opinion, we've chosen to not ask for that opinion in that regard because I think it would essentially favor the notion of clearing it up, and this is the route that we have chosen to take.

**Representative Kretschmar:** Are there any portions of the Fargo School district that are outside the current city limits of Fargo.

**Dr. Charles Cheney:** I am hearing your question as, are there parts of the Fargo school district that are outside of the current city limits of Fargo, the answer to that, to my knowledge, the answer would be no. There may be some unincorporated properties, that are outside the city limits of Fargo. I'm not aware of that right now.

**Representative Zaiser:** Are you aware of any of the city of Fargo, do they have a school district at all for the city of Fargo schools, as close to the city as West Fargo. Does the Fargo school district have any land incorporated in West Fargo.

**Dr. Charles Cheney:** I am not aware of any property that would be in the city of West Fargo, that is in the Fargo public school district.

**Chairman DeKrey:** Thank you. Further testimony in support.

**Sen. Judy Lee:** I'm here to bring SB 2062, which is as Dr. Cheney has said, it is really a clarifying piece of legislation. As you may recall, or perhaps not, because most of these would be in the education committee, the Fargo school district predates statehood, and so Representative Kretschmar and Representative Klemin may have learned this in their legal careers, but there are a fair number of laws over a period of time that have said, that except, for the Fargo public school district #1, these things will be in place. So, over the years, there have been changes, they added unlimited levy, there are other things that Dr. Cheney could go into that in more depth than I, but they have had exemptions to certain things. So the original bill, which would have affected Fargo, was when there were still fields between Fargo and West Fargo. What's important to note is that school district boundaries have not changed for many years.

When the two school districts got together to talk about how they were going to handle some of the outlying areas, where there were rural students the two districts met and Fargo chose not to take very much of the rural areas, in fact a few years ago, I can't say if it's the same right now, but a few years, the West Fargo district was the second largest busser of students. We had the second largest number of students being bussed, second only to Mandan, because we had a large area of rural service for our school district. So the West Fargo district took a lot of that bare land, with more remote residences with children in them, including some little mobile home parks and so forth, and bussed those kids in. Fargo had so few rural students that they hired a taxi cab to bring their student in. So it was a choice at that time, that the district split their boundaries the way they did, when some of those rural acres were brought into those two districts and that information is just a little background for you. This is just intended to clarify the fact that each of the two school districts has the legal right to manage the facilities in their own district, and because of the confusion that was resulting from a comment that was made by one individual, when there is some development going on and it was overlapping district, it seemed to be the appropriate thing to do. In the Senate Education committee, where this was heard, there was some testimony by the representative of the Fargo School district that they weren't quite comfortable with the wording on the original bill, so there was a fair amount of time spent in trying to come up with an amendment that would be suitable and acceptable to both districts, and when it left the Senate, the way it reads was acceptable to Fargo and West Fargo school districts, as far as clarifying who was responsible for their own facility. Obviously, if the West Fargo school district chooses to build an elementary school or a middle school, for example, within the city limits of Fargo, they would have to abide by the building codes and all of those kinds of

things that would have to do with structure, as would be true of any structure that's built, but each of the school districts would manage their own facilities. It isn't encroaching on anything, it's just clarifying effort that we have here. I think it's important to note that both districts have indicated their satisfaction with it.

**Chairman DeKrey:** Is the city line, I-29 between Fargo and West Fargo.

**Sen. Judy Lee:** The school district boundary, wiggles all over the place. In fact, for a really odd spot, the West Fargo school district goes all the way over to 25th Street in one small area between Main Ave. and 13th Ave. in Fargo, it is a gerrymandered line. The gerrymandering was done when the districts were drawn, because of private input from people who wanted to be on one side of the line or the other. In that case, there were some people who owned property in that area that wanted to be in the West Fargo district, that had influence, and so we have a funny line. The property that is west of I-29, all of that would be in West Fargo.

**Chairman DeKrey:** Thank you. Further testimony in support.

**Dan Huffman, Assistant Superintendent, Fargo:** Support. If I could address Representative Kretschmar's question, is yes we have a significant portion of our school district in square feet that is outside the City of Fargo. The Fargo school district, is in fact the one that, in writing, identified this issue for the West Fargo school district in May 2004. It was done in an attempt to call attention to this issue so that it could be addressed legislatively before the West Fargo school district built a building in the City of Fargo, not after. Unfortunately, the extension of that information was not seen in that light with our local media. In fact, they are the ones that chose to write the headlines that suggested that we may be attempting to tax people outside our school district and that was never our intention. We believe, as does the West Fargo school district, that

every school district in the state deserves the right to build buildings, anyplace inside the boundaries of their school district and as such, actually called that to their attention. That letter sent by the Fargo school district, to West Fargo in May 2004, resulted in SB 2062. As Sen. Lee shared with you earlier, we did have some original concerns with that bill, because it in fact, removed from the bill the language that would have allowed us to manage our own facilities, because in our school district, because we were a school district before the state was a state, all of our real property is titled, City of Fargo for use of the schools. In Section 15.09-33, subsection 3, is the one that gave our school board the authority to operate those buildings, not the City of Fargo. SB 2062, as it was originally introduced, took that away from us, and we weren't terribly interested in having to go to the Mayor or City Commission to operate our own buildings. So we weren't together on the amendments that were introduced in the Senate and we are at the present time supportive of SB 2062. We do believe there are other issues that still remain. In the 1970's, the changes in the statutes that actually created this issue, still need to be addressed and I would concur with Dr. Cheney, we are not here in any manner to diminish the West Fargo school district or to elevate the Fargo school district beyond what it is. We do, however, have an ongoing concern that the long-term viability of both school districts, ultimately is going to have to be addressed at some point in time with the development situations as they are occurring in our community and with the hope that, at some point in time in the future, that that is going to be a topic of discussion, that is not a topic of discussion for this bill. I am here to lend our support to SB 2062 as it's written.

**Representative Onstad:** When the cities look at their next property, are they in communication with the school district on that to work together, on annexation of property.



**Dan Huffman:** We are at about 319 mills, probably about 60 mills difference between the two school districts. In answer to your question, I believe the City of Fargo is getting better at communicating with us than they were in the past. That's the result of efforts on both sides. We still probably are a little surprised occasionally at some of their annexations, but most of what is occurring at the present time, is occurring outside the Fargo school district, so it really is more of an issue with the City of Fargo and the West Fargo school district, than it is a City of Fargo and Fargo school district. Any annexations of the city of Fargo that's going to occur north and south, is going to be in the Fargo school district. Any annexation of the City of Fargo that's going to occur moving west, is going to be in the West Fargo school district.

**Chairman DeKrey:** Thank you. Further testimony in support. Testimony in opposition. We will close the hearing.

(Reopened later in the same session).

**Chairman DeKrey:** What are the committee's wishes in regard to SB 2062.

**Representative Koppelman:** I move a Do Pass.

**Representative Maragos:** Seconded.

13 YES 0 NO 1 ABSENT

DO PASS

CARRIER: Rep. Boehning

Date: 2/28/05  
Roll Call Vote #: 1

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2062

HOUSE JUDICIARY COMMITTEE

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass

Motion Made By Rep. Koppelman Seconded By Rep. Maragos

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	✓		Representative Delmore	✓	
Representative Maragos	✓		Representative Meyer	✓	
Representative Bernstein	A		Representative Onstad	—	
Representative Boehning	✓		Representative Zaiser	—	
Representative Charging	✓				
Representative Galvin	✓				
Representative Kingsbury	✓				
Representative Klemin	✓				
Representative Koppelman	✓				
Representative Kretschmar	✓				

Total (Yes) 13 No 0

Absent 1

Floor Assignment Rep. Boehning

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE (410)**  
February 28, 2005 1:55 p.m.

**Module No: HR-36-3782**  
**Carrier: Boehning**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**SB 2062, as engrossed: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO PASS (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2062 was placed on the Fourteenth order on the calendar.**

2005 TESTIMONY

SB 2062

**Flakoll, Tim**

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**From:** Cheney, Charles [CHENEY@west-fargo.k12.nd.us]  
**Sent:** Thursday, January 27, 2005 9:42 AM  
**To:** Lee, Judy E.  
**Cc:** Flakoll, Tim  
**Subject:** RE: amendments

Judy: We are Ok with the proposed amendment. The net result will be that lines 10-11-12 on page 1 of the bill with read as follows.

3. Have custody and control of all school district property and, in the case of the board of education of the city of Fargo, to have custody and control of all public school property within the boundaries of the Fargo Public School District and to manage and control all school matters.

Thanks for your work on this. I am sending a cc to Tim Flakoll

Chuck

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**From:** Lee, Judy E. [mailto:jlee@state.nd.us]  
**Sent:** Thursday, January 27, 2005 8:47 AM  
**To:** Cheney, Charles  
**Subject:** amendments

Chuck - any word on whether or not the amendments which were last sent about the Fargo/West Fargo bill, the number of which slips my mind right now, are acceptable? (My English teacher would really hate that sentence!)

**Flakoll, Tim**

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**From:** Dan Huffman [huffmda@fargo.k12.nd.us]  
Monday, January 31, 2005 10:02 AM  
Flakoll, Tim  
**Subject:** Re: SB 2062

Tim,  
I received the fax from Shirley. It looks OK to me as amended. Is anything happening with the other possible amendments along the lines Tony suggested.

Dan

Testimony on Senate Bill 2062  
Presented by Dr. Charles Cheney, Superintendent, West Fargo Schools  
January 18, 2005

Senator Freborg and members of the Senate Education Committee, I am here to offer my support and the support of the West Fargo School Board on Senate Bill 2062.

This bill is intended to clarify the law as it pertains to a potential conflict that exists in the current statutes that has an impact on the West Fargo School District and the Fargo School District.

The West Fargo School District serves property that is in the city limits of the cities of West Fargo, Fargo, Reile's Acres, Harwood, and Horace. As the City of Fargo expands its boundaries, much of that expansion annexes rural property that is served by the West Fargo School District. It is this property that is in the City of Fargo and in the West Fargo School District that is directly impacted by the proposed changes in Senate Bill 2062.

NDCC Section 15.1-09-33 currently reads, "The board of a school district may...have custody and control of all school district property and, in the case of the board of education of the city of Fargo, to have custody and control of all public school property in the city and to manage and control all school matters."

School boards are granted the authority to have custody and control of school district property. However, since the Fargo School District is granted additional powers and duties, including the ability to have custody and control of school of all public school property in the City of Fargo, the argument could be made that any buildings constructed by the West Fargo School District within the City of Fargo would need to be controlled by the Fargo School District.

NDCC Section 15.1-09-48 also appears to create a potential problem. It reads, "The board of education of the city of Fargo has the power to levy taxes within the boundaries of the Fargo public school district and to cause such taxes to be collected in the same manner as other city taxes." Since portions of the West Fargo School District exist within the city limits of the City of Fargo, what does it mean to have the Fargo School District levy and collect taxes in the same manner as other city taxes? It appears to be technically possible under the law that the taxpayers of this affected area could be assessed property taxes by both the West Fargo School District and the Fargo School District. However, they would only be residents of the West Fargo School District and would enjoy no privileges in the Fargo School District, particularly the right to vote in school elections.

It is imperative that the West Fargo School District be allowed an equal footing as every other school district in the state. The ability to build and maintain schools in appropriate locations within the school district is essential to the long-term health of the district. It also is important for parents to know that neighborhood schools can be built to support growing populations of students without regard to the city in which that neighborhood exists.

Patrons of the school district that reside in the city limits of the City of Fargo should also be afforded the peace of mind that they will not have a potential of double taxation for school purposes, simply because of a technicality in the way the statutes were constructed to support the Fargo School District.

The Fargo metropolitan area is well-served by two outstanding school districts. It is not our intention to diminish the Fargo School District or to elevate the West Fargo School District. Our only intention is to clarify what we believe is the intention of the statutes, and to have them



conform to the way that the Fargo School District and the West Fargo School District currently operate.

To ensure that the Fargo School District does not lose any of the powers and duties that it currently exercises, we are offering an amendment to this bill that re-instates portions of the statute that relate specifically to the Fargo School District. On page 1, lines 10 – 12 should be re-written to read "Have custody and control of all school district property and, in the case of the board of education of the city of Fargo, to have custody and control of all public school property within the Fargo Public School District and to manage and control all school matters therein." This amendment removes the reference to the City of Fargo and replaces it with a reference to the Fargo Public School District.

I hope you will consider the proposed amendment and give this bill a recommendation of "Do Pass as Amended".

Thank you for you attention.

**58<sup>th</sup> North Dakota Legislative Assembly**  
**Senate**  
**Senate Education Committee**  
**SB 2062**

Earlier in 2004, the Fargo School District, in writing, brought to the attention of the West Fargo School District, a potential conflict in law that appeared to exist with respect to school building ownership and operation in the city of Fargo. In that correspondence we asked that we work together to address a solution to this issue.

As a result of this initial contact from the Fargo School District, the West Fargo School District had SB2062 drafted and introduced. This bill, as it is drafted must be opposed by the Fargo School District.

All of our buildings are titled, City of Fargo for use of the schools. Without the language in 15.1-09-33 part 3, we would not have control of our own facilities. As a minimum, that language needs to be reinstated and amended to read;

3. Have custody and control of all school district property and, in the case of the board of education of the city of Fargo, to have custody and control of all public school property in the Fargo School District and to manage and control all school matters.

While this language addresses the specific issue of operation of schools within the district, it does not address the real issue addressed in the early 1970s. That issue remains and will still need to be addressed.

Our request is that the issue addressed in the 1970s receive discussion and a proactive approach so the problem solved in the 1970s not reoccur again without a long term solution to the financial stability of both school districts.

The Fargo School Board opposes this legislation as drafted and without amendment recommends a do not pass recommendation from the Senate Education Committee.

Testimony provided by

Dan Huffman, Asst. Supt.  
Fargo Public School District #1

Testimony on Senate Bill 2062  
Presented by Dr. Charles Cheney, Superintendent, West Fargo Schools  
February 28, 2005

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In general, school boards are granted the authority to have custody and control of school district property. However, since the Fargo School District is granted additional powers and duties, including the ability to have custody and control of school of all public school property in the City of Fargo, the argument could be made that any buildings constructed by the West Fargo School District within the City of Fargo would need to be controlled by the Fargo School District.

NDCC Section 15.1-09-48 also appears to create a potential problem. It reads, "The board of education of the city of Fargo has the power to levy taxes within the boundaries of the Fargo public school district and to cause such taxes to be collected in the same manner as other city taxes." Since portions of the West Fargo School District exist within the city limits of the City of Fargo, what does it mean to have the Fargo School District levy and collect taxes in the same manner as other city taxes? It appears to be technically possible under the law that the taxpayers of this affected area could be assessed property taxes by both the West Fargo School District and the Fargo School District. However, they would only be residents of the West Fargo School District and would enjoy no privileges in the Fargo School District, particularly the right to vote in school elections.

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Patrons of the West Fargo School District who reside in the city limits of the City of Fargo should also be afforded the peace of mind that they will not have a potential of double taxation for school purposes, simply because of a technicality in the way the statutes were constructed to support the Fargo School District.

The Fargo metropolitan area is well-served by two outstanding school districts. It is not our intention to diminish the Fargo School District or to elevate the West Fargo School District. Our only purpose is to clarify what we believe is the intention of the statutes, and to have them

conform to the way that the Fargo School District and the West Fargo School District currently operate.

I hope you will give this bill a "Do Pass" recommendation.

Thank you for you attention.

## Additional information on the ramifications of SB 2062

- There is a growing section of the City of Fargo that is in the West Fargo School District
- At this time the West Fargo School District does not own or operate any schools in the section of their school district that lies in the City of Fargo
- This area is growing and the developers and residents want and desire to have schools built in their neighborhoods
- Currently, the language in NDCC 15.1-09-33 states that all school property in the City of Fargo is under the custody and control of the Fargo Public School District. The language also indicates that the Fargo Public School District manages and controls all school matters.
- As a result, the West Fargo School District would be unable to operate a school within its own boundaries, if that school were located in the City of Fargo
- It is unlikely that the West Fargo School District could issue bonds to build a school since custody of the property would reside with the Fargo Public School District
- The Fargo and West Fargo School Districts agree that there should be no developing section of any school district or city that is by law not eligible to have a school
- If this bill fails, it will cause grave concern with developers who will be at a great disadvantage. The neighborhoods they are developing or planning to develop will not have schools without the proposed changes.
- The West Fargo School District does not agree with those who opposed the bill with the approach that this is somehow a "piecemeal" approach to a bigger problem. This bill stands alone in its effort to give citizens of a growing section of the West Fargo School District the right to have schools located in their neighborhood.

### ***What are the interests of the West Fargo Schools in introducing Senate Bill 2062?***

Like all other school districts in the state of North Dakota, they simply want to exercise their right and obligation to students and parents to appropriately locate schools anywhere in their school district.

District Administration

May 18, 2004



415 4<sup>th</sup> Street North  
Fargo, ND 58102-4514  
701.446.1000  
Fax: 701.446.1200  
www.fargo.k12.nd.us

Dr. David Flowers  
Superintendent  
701.446.1005

Mr. Dan Huffman  
Assistant Superintendent,  
Business Services  
701.446.1027

Dr. Charles DeRemer  
Assistant Superintendent,  
Instruction  
701.446.1010

Mrs. Nancy Jordheim  
Assistant Superintendent,  
Human Resources  
701.446.1038

Mr. Lowell Wolff, APR  
Administrator,  
Community Relations  
701.446.1043

West Fargo Board of Education  
Dr. Chuck Cheney, Superintendent  
207 West Main Ave.  
West Fargo, ND 58078

Dear Dr. Cheney and Members of the West Fargo Board of Education:

I have been asked to write on behalf of the Fargo Board of Education to alert you to a potential conflict in statutes. It has been brought to our attention that the West Fargo Board of Education has purchased or is looking at purchasing acreage in the proximity of the Osgood development for a future school site. As you are aware, the district for the Fargo Public Schools does not include the entire area controlled by the City of Fargo. However, after reviewing a number of statutes, our attorney believes that there are conflicts in statutes empowering our districts to build and operate schools and to exercise taxing authority.

It is clear under N.D.C.C. § 15.1-09-33, which addresses school board powers, that school boards "have custody and control of all school district property and, in the case of the board of education of the City of Fargo, to have custody and control of all public school property in the city and to manage and control all school matters." The Board of Education of the City of Fargo has the power "to have the control and management of the public schools of the city and from time-to-time adopt rules for their good order, prosperity and utility." N.D.C.C. § 15.1-09-50. Also, the current language in the statute would seemingly authorize Fargo Public School Board to have the right to levy property taxes on areas that are currently generating taxes which benefit the West Fargo School District. "The Board of Education of the City of Fargo has the power to levy taxes and to cause such taxes to be collected in the same manner as any other city taxes." N.D.C.C. § 15.1-09-48.

Certainly the statutes cited above are in conflict with statutes governing districts other than Fargo. N.D.C.C. § 15.1-09-33, subd. 31 does allow the board of a school district to "levy a tax upon property in the district for school purposes."

Regardless of the rationale for these conflicting statutes remaining in effect even through revisions as recent as 1999, we believe this issue should be resolved. Please have your legal counsel review this issue and advise as to your position. Depending on your position perhaps we could explore resolution of this matter together. We believe our districts would be best served by jointly bringing this issue to the Legislative Interim Education Committee to propose legislation to resolve the problem. Such resolution is in the best interests of our districts and the children we serve.

We look forward to hearing from you.

Yours truly,

David Flowers  
Superintendent

Dan Froenking