

## RENOVATION OF SCHOOL FOR THE DEAF BUILDING BY PRIVATE ENTITY

This memorandum is in response to a request for information regarding whether the School for the Deaf may lease a building to a private entity that would pay for certain renovations to the building.

North Dakota Century Code Section 15.1-02-07 authorizes the Superintendent of Public Instruction to lease surplus portions of real property, including buildings and improvements owned by the state for the School for the Deaf. That section further provides that the Superintendent may lease the unused portion of a building only after consultation with and adherence to conditions set by the administrator of the state fire and tornado fund. A lease agreement entered under Section 15.1-02-07 may not exceed five years and must provide that the agreement may be canceled by the state without liability at the end of any state fiscal biennium and may be renewable in the sole discretion of the Superintendent at the beginning of each biennium.

Section 15.1-02-07 authorizes the Superintendent of Public Instruction to set additional terms and conditions for leases and requires the Attorney

General to review any lease proposed to be entered by the Superintendent and approve the legal adequacy of the lease by execution of the lease. Under Section 15.1-02-07, the Superintendent may expend revenues from leases only with legislative approval.

There does not appear to be any provision of law which would preclude the Superintendent of Public Instruction from including as a condition of a lease executed under Section 15.1-02-07 the requirement that the lessee pay the cost of any improvement necessary. If the improvement to the property is a fixture that is removable, one consideration that should be addressed in any such lease agreement is whether the lessee may remove the improvement upon the termination of the lease. Section 47-06-04 provides that "[w]hen a person affixes that person's property to the land of another without an agreement permitting that person to remove it, the thing affixed belongs to the owner of the land, unless the owner of the land chooses to require the former to remove it."