

N.D.A.G. Letter to Larson (Jan. 10, 1990)

January 10, 1990

Mr. Martin Larson, Chairman
Barnes County Social Service Board
Barnes County Courthouse
Valley City, ND 58072

Dear Mr. Larson:

Thank you for your December 26, 1989, letter, requesting my opinion concerning whether the county commission may set the salary and personnel policies for social service employees, and who is responsible to provide legal representation to the Social Service Board.

As you point out in your letter, the Attorney General and members of his staff are not authorized to give legal advice or assistance to private businesses, members of the general public, and certain public officials in the state. We may only serve as legal advisors to state officials, state's attorneys, and certain city officials. I, therefore, urge you to seek the services of an attorney engaged in the private practice of law, or your local state's attorney, and rely upon his or her advice. However, I do offer the following information for your assistance. This information should not necessarily be considered as a formal legal position of this office.

You first ask which board has authority to set salaries for county social service employees. That question has been addressed in a prior opinion of this office, N.D. Op. Atty Gen. 81-121. A copy is enclosed for your review.

Your next question pertains to whether a county personnel classification and compensation plan is applicable to county social service employees. Similar questions were addressed in at least two formal opinions issued by this office, N.D. Op. Atty Gen. 81-106 and 81-137, and a letter opinion issued July 7, 1989, to Ms. Carol S. Nelson, Barnes County State's Attorney. Copies are enclosed for your review. You will note that the letter to Ms. Nelson states that there is no provision in North Dakota law which makes the merit system policies exclusive, and that both the county system and the merit system could apply and be binding on county social service board employees. Further, in cases of conflict between provisions of the two systems, the merit system must be followed.

Finally, you inquired about separate legal representation for the county social service board if a dispute should ripen into some sort of legal action and if the board of county commissioners was represented by the state's attorney. North Dakota law does not address this situation. N.D.C.C. §§ 11-16-01(9) and 50-01-22 establish the state's attorney as your legal advisor and advocate in certain instances other than the one you describe. Copies of these statutes are enclosed for your review. N.D.C.C.

§ 11-16-01-(12) and (13) also provide that the state's attorney is a legal advisor and advocate for the board of county commissioners. There is no provision specifically providing for separate representation for county social service boards in the situation you described.

I hope this information is of some assistance to you.

Sincerely,

Nicholas J. Spaeth

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Enclosure