

N.D.A.G. Letter to Sinner (Feb. 20, 1991)

February 20, 1991

The Honorable George A. Sinner
Governor
State of North Dakota
State Capitol
600 East Boulevard Avenue
Bismarck, ND 58505

Dear Governor Sinner:

Thank you for your January 9, 1991, letter in which you request my opinion as to whether the employees of the Governor's Employment and Training Forum are state employees.

There is no provision in state law which specifically addresses the question you have posed. However, there are a number of relevant factors and statutes which can be considered in determining whether the employees of the Governor's Employment and Training Forum are state employees.

The Governor's Employment and Training Forum is a council which was established by executive order "within the office of the Governor" to serve as the State Job Training Coordinating Council and the Private Industry Council for purposes of the Job Training Partnership Act. N.D. Exec. Order No. 1983-2, March 10, 1983. The Job Training Partnership Act requires states to establish a Private Industry Council and a State Job Training Coordinating council. 29 U.S.C.S. §§ 1512, 1532 (1990). Executive Order 1983-2 has been reaffirmed and ratified and remains in full force and effect. N.D. Exec. Order No. 1986-4, October 27, 1986.

The Governor's Employment and Training Forum, acting in its capacity as the Private Industry Council and the State Job Training Coordinating Council, is authorized to hire support staff under the Job Training Partnership Act. 29 U.S.C.S. §§ 1513(3), 1532(a)(5) (Law. Co-op. 1990). As you know, this authority was exercised and the Governor's Employment Training Forum currently has four employees consisting of a director, assistant director, secretary and auditor.

The term "employee" is defined in several statutes, none of which relates specifically to the Governor's Employment and Training Forum. When a statutory definition is not provided, words are to be understood in their ordinary sense. N.D.C.C. § 1-02-02. In its ordinary sense, the word "employee" is one who is "employed by another usually for wages or salary." Webster's New Collegiate Dictionary at p. 373 (1975). Thus, the common meaning of the term "state employee" is one who is employed by the state. It is undisputed that the Governor's Employment and Training Forum is a state entity having been established by state executive order. Furthermore, the employees of the Governor's

Employment and Training Forum receive compensation from the Governor's Employment and Training Forum. Thus, employees of the Governor's Employment and Training Forum are state employees.

The treatment of these individuals for purposes of other benefits is also consistent with this conclusion. The records of the Central Personnel System indicate that the employees of the Governor's Employment and Training Forum were all hired through that system. The Central Personnel System, N.D.C.C. ch. 54-44.3, governs the hiring process for state employees. The Central Personnel System was created in order to establish a unified system of personnel administration for state employees. N.D.C.C. § 54-44.3-01.

N.D.C.C. ch. 54-52 creates the Public Employees Retirement System for state employees. N.D.C.C. § 54-52-02 provides:

All departments, boards, institutions, commissions, or agencies of the state of North Dakota, the Garrison Diversion Conservancy District, district health units, the legislative assembly, the supreme court, and the district courts, hereinafter referred to as agency, shall participate in a retirement system which will provide for the payment of benefits to state employees and officials, or to their beneficiaries, thereby enabling those employees and officials to care for themselves and their dependents and which by its provisions will improve and reward state employment and service, reduce excessive personnel turnover, and offer career employment to high-grade men and women. . . .

Membership in the Public Employees Retirement System is available for every eligible permanent state employee. N.D.C.C. § 54-52-05(1). "Eligible employee" means all permanent employees who meet all of the eligibility requirements set by this chapter" N.D.C.C. § 54-52-01(3). The records of the Public Employees Retirement System indicate that the employees of the Governor's Employment and Training Forum are participating members in the Public Employees Retirement System.

The Uniform Group Insurance Program was created to provide health and life insurance benefits for eligible state employees. N.D.C.C. § 54-52.1-02. The term "eligible employee" is defined for purposes of the program as "every permanent employee who is employed by a governmental unit, as that term is defined in section 54-52-01." N.D.C.C. § 54-52.1-01(4). "Governmental Unit" is defined, in part, as "the state of North Dakota." N.D.C.C. § 54-52-01(7). Records of the Uniform Group Insurance Program indicate that the employees of the Governor's Employment and Training Forum are participants who have obtained both health and life insurance coverage under this program.

N.D.C.C. ch. 26.1-21 establishes the State Bonding Fund. The purpose of this fund is to provide fidelity bond coverage for public employees. N.D.C.C. § 26.1-21-06. "Public employee" is defined, in part, as "any person employed by the state." N.D.C.C. § 26.1-21-01(5). Records of the State Bonding Fund indicate that the employees of the Governor's Employment and Training Forum are all insured under that fund.

It is also noted that you administratively assigned the employees of the Governor's Employment and Training Forum to Job Service North Dakota and those employees are physically housed within the state administrative office building of Job Service North Dakota. Letter from Governor George A. Sinner to Michael V. Deisz (July 12, 1985). The employees of the Governor's Employment and Training Forum are paid through the Job Service North Dakota payroll system which issues W-2 forms to these individuals.

The Governor's Employment and Training Forum was established within and remains within the office of the Governor. The employees of the Governor's Employment and Training Forum were hired through the Central Personnel System and they participate in the Public Employees Retirement System and the Uniform Group Insurance Program and are covered by the State Bonding Fund. These programs require that participants and those covered be state employees. The employees in question have also been administratively assigned to Job Service North Dakota and are paid through its payroll system. Under these circumstances, it is my opinion that the employees of the Governor's Employment and Training Forum are state employees.

Sincerely,

Nicholas J. Spaeth

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