

**OPINION
67-175**

November 20, 1967 (OPINION)

Mr. John A. Alphson

State's Attorney

Grand Forks County

RE: Public Welfare - Mental Evaluation - Court Order

Your letter to this office discusses a recent case in Grand Forks County where the defendant was ordered by the court to the Northeast Regional Mental Health and Retardation Service Center for psychiatric and psychological evaluation under authority of section 50-06-06(15). You state that the fee for such service was paid by the County Welfare Board and request our opinion on the following questions:

- 1) The statute states that the services must be rendered when requested by a Judge. Does this mean that a court must request prior to ordering that the services be done.
- 2) The statute that the Welfare Board shall provide the services 'insofar as resources permit.' Does this permit the request be to the extent of providing payment for this type of service or must the service be performed by the existing facilities of the Welfare Board.
- 3) Is it the State Welfare Board's obligation or would it be the County Welfare Board's obligation to provide the services.
- 4) The statute provides that the report be 'kept as confidential for the use of the court.' Does this preclude the Judge from allowing attorneys for the prosecution and defense to have copies."

Your letter is not clear on the point but we shall presume the Judge of the District Court ordered the psychiatric and psychological evaluation for evidence in aggravation or mitigation of punishment for the defendant under authority of section 29-26-18.

Subsection (3) of section 29-26-18 states that the result of psychological testing and psychiatric examination may be received by the court in aggravation or mitigation of punishment without verification or other foundation. It is one of the powers and duties of the Public Welfare Board to provide the District Court with psychological testing and psychiatric evaluations upon request. See section 50-06-06(15) of the North Dakota Century Code which reads as follows:

The public welfare board shall have the following powers and duties:

* * *

15. To provide social histories and other social services, psychological testing and related services, and psychiatric evaluations and treatment in so far as resources permit, when requested by a judge of the district court in juvenile and criminal cases, to be kept as confidential for the use of the court."

Your first question concerns the manner in requesting the services the Public Welfare Board is required to give under section 50-06-06(15) of the North Dakota Century Code. The statute does not set forth the services of the Public Welfare Board. The word "request" is not a word of art requiring certain methods of procedure but takes the commonly understood meaning of the term. Black's Law Dictionary, Fourth Edition (1951) at page 1468, defines "request" as "the expression of a desire to some person for something to be granted or done;" Therefore, it is our opinion that the court's request is in reality an order requiring certain services, and in following this section, the court's request may be in the form of a formal order or any other written instrument.

The words used in any statute are to be understood in their ordinary sense, unless a contrary intention plainly appears.

See section 1-02-02 of the North Dakota Century Code. The commonly understood meaning of "resource" as found in Webster's Dictionary, Second Edition (1963) at page 1542, means "something that lies ready for use or can be drawn upon for aid; a supply of something to take care of a need." Applying this definition to subsection (15) of section 50-06-06 would naturally lead to the conclusion that the phrase "in so far as resources permit" would include the payment to private parties or other governmental agencies for psychological testing and psychiatric evaluations. The services are not limited to those which may be performed by the existing facilities of the Welfare Department. However, whether their resources permit the payment for services performed by private parties and other governmental agencies or are limited to services performed in existing facilities of the Welfare Department is a question which must be determined by the Welfare Board. The Welfare Board is the agency which must decide the scope and extent of their recourses.

Section 50-06-06(15), as previously quoted, states that it is the duty of the Public Welfare Board to provide certain services to the District Court in juvenile and criminal cases while the North Dakota law does not require the County Welfare Board to render such services. Therefore, it would seem that the Legislature intended the state rather than the counties provide the services provided in section 50-06-06(15). It is our opinion that it is the State Welfare Board's obligation and not that of County Welfare Boards to provide social histories and other social services, psychological testing and related services, and psychiatric evaluations and treatments when requested by the District Court in juvenile and criminal cases.

In answer to your final question, section 50-06-06(15) states that the information given to the District Court by the Public Welfare Board is to be kept as confidential for the use of the court. However, section 29-16-18, which sets forth the uses and reasons for the psychological testing and psychiatric examination in section

50-06-06(15), provides that such results shall be subject to such inspection and confrontation of witnesses as the court may permit or require in the interests of justice. We believe the information given to the court should be kept confidential from the general public but this was not meant to preclude the District Court from permitting the attorneys for the prosecution and the defense to examine the reports.

HELGI JOHANNESON

Attorney General