

Office of the Attorney General  
State of North Dakota

Opinion No. 81-106

Date Issued: October 6, 1981

Requested by: F. C. Rohrich, Emmons County State's Attorney

--QUESTION PRESENTED--

Whether personnel policies and personnel decisions concerning the employees of a county social service board are made by the county social service board, the board of county commissioners or the state central personnel division.

--ATTORNEY GENERAL'S OPINION--

It is the Attorney General's opinion that the authority to set personnel policies and make personnel decisions concerning the employees of a county social service board is shared between the state central personnel division, the county social service board, and the board of county commissioners.

--ANALYSIS--

The county social service board is the local administrative unit for programs created by Titles IV, XIX, and XX of the Social Security Act, the Food Stamp Act, and the Low-Income Energy Assistance Act, all federal acts which require the local administrative unit to select staff by a merit system. The state central personnel division was created to establish a statewide classified service based on merit principles. Section 54-44.3-17 of the North Dakota Century Code, provides:

54-44.3-17. GRANT-IN-AID PROGRAMS. Whenever the provisions of any law, rule, order, or regulation of the United States or of any federal agency or authority providing or administering federal funds for use in North Dakota require civil service or merit standards or classifications other than those required by the provisions of the chapter and rules and regulations promulgated under this chapter, then the provisions of such law, rule, order, or regulation shall prevail and shall govern the employees affected thereby. The division shall provide those services necessary to comply with merit standards for federal grant-in-aid agencies.

The specific duties of the director of the division include the establishment of 'general policies, rules, and regulations . . . which shall be binding on the agencies affected. . . .' (Emphasis supplied) Section 54-44.3-12, N.D.C.C.

Specific duties of the county social service board are set forth in Section 50-01-09, N.D.C.C. Subsection 1 requires that board to 'supervise and direct all relief and welfare activities conducted by the county. . . .' Subsection 2 requires that board to 'supervise and administer . . . such relief and welfare activities in the county as may be financed . . . by or with funds allocated or distributed by the department of human services.' The authority to employ persons necessary to discharge the duties is implicit in the 35-day per year limitation on time spent in transacting county social service board business under Section 50-01-08.3, N.D.C.C., and the reference to 'employee' in Section 50-01-08.1, N.D.C.C. The only reasonable way in which these statutes may be understood is as a grant of authority to do those things reasonably necessary to see that the statutory duties are carried out.

The grant of authority to the county social service board with respect to personnel policies is not unlimited. In addition to the constraints of the state central personnel division, that board must secure funds for operations from the board of county commissioners. The county social service board, like any other county office, is bound by the provisions of Section 11-23-26, N.D.C.C., which states, in part: '[N]o county expenditures shall be made or liability incurred . . . in excess of the appropriation therefore. . . .' The board of county commissioners may, by the use of a line-item budget and appropriation, limit the decision-making flexibility of the county social service board. However, once the county commission appropriates monies to the social service board for a particular purpose, the social service board may obligate in any way consistent with the item of appropriation.

Ultimately, the board of county commissioners possess more than the fiscal control derived from the appropriation process. Section 50-01-10, N.D.C.C., permits a member of a county social service board to be removed without cause, a process which may be initiated by the board of county commissioners. Vacancies on the county social service board, whether caused by removal, resignation, or expiration of appointment, are filled by the commission. If the commission chooses, it may place its own members on the county social service board, all pursuant to Section 50-01-07, N.D.C.C. These powers of the board of county commissioners are less direct than the administrative powers of the county social service board, but are no less real.

--EFFECT--

This opinion is issued pursuant to Section 54-12-01, N.D.C.C. It governs the actions or public officials until such time as the question presented is decided by the courts.

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