

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 94-F-03

Date issued: January 27, 1994

Requested by: Henry C. "Bud" Wessman, Executive Director,
North Dakota Department of Human Services

- QUESTION PRESENTED -

Whether a report or any other information held by the Department of Human Services as a result of an investigation by state officials under North Dakota Century Code (N.D.C.C.) ch. 50-25.1 concerning events at the Wahpeton Indian School may be made available to the United States Department of the Interior, in particular the Bureau of Indian Affairs, and members of North Dakota's congressional delegation.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that the Department of Human Services may transfer reports, as well as other information obtained, concerning an investigation made pursuant to N.D.C.C. ch. 50-25.1 to appropriate officials within the United States Department of Interior who require such information in connection with the discharge of their official duties concerning the Wahpeton Indian School. It is my further opinion that the question of whether members of the North Dakota congressional delegation are public officials with official duties the discharge of which would require such information, is a question of fact on which I cannot give an opinion.

- ANALYSIS -

Officials of the Department of Human Services (DHS) conducted a cooperative investigation with officials from the United States Department of Interior, Bureau of Indian Affairs concerning allegations of child abuse at the Wahpeton Indian School. The reports of the investigation are confidential and may only be disclosed as provided by law. N.D.C.C. ? 50-25.1-11 provides that "reports made under [chapter 50-25.1], as well as any other information obtained, are confidential and must be made available to . . . [p]ublic

ATTORNEY GENERAL'S OPINION 94-03
January 27, 1994

officials and their authorized agents who require such information in connection with the discharge of their official duties. N.D.C.C. ? 50-25.1-11(5); see also N.D. Admin. Code ? 75-03-19-08 (permitting DHS to "exchange or transfer information" with designated investigatory agencies).

A "public official" is a person holding "'a public position to which a portion of the sovereignty of the country either legislative, executive, or judicial, attaches for the time being, and which is exercised for the benefit of the public.'" State ex rel. Johnson v. Myers, 19 N.W.2d 745, 749 (N.D. 1945), (quoting State ex rel. McArthur v. McLean, 159 N.W. 847, 850 (N.D. 1916)). Officials of the United States government therefore are public officials as that phrase is defined under North Dakota law. However, to be eligible to obtain the information "public officials" must "require such information in connection with the discharge of their official duties." N.D.C.C. ? 50-25.1-11(5).

Officials of the Bureau of Indian Affairs are charged with duties concerning the Wahpeton Indian School. The Wahpeton Indian School is a cooperative school operated by the Wahpeton School Board and the Bureau of Indian Affairs in conformance with state and federal school laws and regulations. 25 C.F.R. ? 31.0(b) (1993). Red Lake Band of Chippewa Indians Resolution No. 47-91. See also Allery v. Hall, Civil No. 93-280 (Richland Cty. Ct.) (Transition Plan for Wahpeton Indian School, Appendix of Amicus Brief of the State of North Dakota). The Wahpeton Indian School is located on lands owned by the United States under the control of the Bureau of Indian Affairs. See Allery v. Hall, supra (Deeds and other documents relating to the Wahpeton Indian School property). The Bureau of Indian Affairs has a duty to "direct and supervise the operations of all personnel directly and substantially involved with provision of education services by the Bureau." 25 U.S.C. ? 2006(b) (1989).

Federal law specifically provides that states investigating alleged child abuse may provide reports to the federal government. Local law enforcement agencies, including federal, tribal, or state law enforcement agencies having primary responsibility for the investigation of an instance of alleged child abuse within a particular portion of Indian country, which receive a report alleging child abuse "shall immediately initiate an investigation of such allegation and shall take immediate, appropriate steps to secure the safety

ATTORNEY GENERAL'S OPINION 94-03
January 27, 1994

and well-being of the child or children involved." 25 U.S.C. ? 3203(c)(2)(A) (1991). Federal law further provides that "agencies of any Indian tribe, of any State, or of the Federal Government that investigate and treat incidents of abuse of children may provide information and records to those agencies of any Indian tribe, any State, or the Federal Government that need to know the information in performance of their duties." 25 U.S.C. ? 3205 (1991).

It is my opinion that officials of the Bureau of Indian Affairs are public officials who have official duties regarding the investigation of allegations of child abuse at the Wahpeton Indian School. It is therefore my opinion that a report compiled by state officials may be disclosed to the Bureau of Indian Affairs by the Department of Human Services in accordance with state and federal law.

There is no particular legal authority charging the members of North Dakota's United States congressional delegation with any duties concerning the investigation of allegations of child abuse at the Wahpeton Indian School. If the individual members of the North Dakota congressional delegation are also members of a congressional committee having oversight authority related to the Wahpeton Indian School, that authority may possibly constitute an official duty concerning the investigation of the allegations of child abuse at the Wahpeton Indian School. However, without further information it is not possible to determine whether the members of the North Dakota congressional delegation have such an official duty. Therefore, it is my further opinion that there is insufficient information to determine whether the members of the North Dakota congressional delegation fit within an exception to the general confidentiality requirements concerning reports of suspected child abuse or neglect pursuant to N.D.C.C. ? 50-25.1-11(5).

- EFFECT -

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

Heidi Heitkamp
ATTORNEY GENERAL

ATTORNEY GENERAL'S OPINION 94-03
January 27, 1994

Assisted by: Edward E. Erickson
Assistant Attorney General

vkk