

LETTER OPINION
2000-L-122

July 6, 2000

Honorable Wanda Rose
State Representative
1429 Pocatello Drive
Bismarck, ND 58504-6451

Dear Representative Rose:

Thank you for your letter asking about the "demotion" of a state employee.

In any situation involving state employee personnel, it is possible that one of my assistants has consulted with the state agency involved or that this office will be representing a state agency in a contested proceeding involving a state employee. Therefore, caution must be used in responding to questions such as yours, which give the impression they relate to a specific incident, so those involved in finding facts and making decisions are not inappropriately influenced by comments from this office.

You first ask whether it is a "demotion" for a "state employee to be stripped of all managerial responsibility and given no new job description but assigned primarily secretarial tasks so long as the employee receives the same salary."

Administrative rules issued by the Central Personnel Division of the Office of Management and Budget define the term "demotion" as follows:

"Demotion" means an involuntary reduction in the base salary of a regular employee resulting from reassignment for cause to a position in a lower class.

N.D.A.C. § 4-07-19-02(2).

Under the same section of the Administrative Code, the term "cause" means:

Conduct related to a regular employee's job duties, job performance, or working relationships that is detrimental to the discipline and efficiency of the service in which the employee is or was engaged.

Thus, if the classified employee's base salary was not involuntarily reduced because of a reassignment for cause to a position in a lower class, the employee has not been demoted as defined by Central Personnel rules.

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You next ask whether an agency head needs to have a reason or cause for a "demotion." Pursuant to N.D.A.C. § 4-07-19-03, a regular employee may only be disciplined for cause. However, if base salary has not been reduced because of a disciplinary placement in a different class, then a demotion under the rules has not been imposed. In addition, administrative rules issued by the Central Personnel Division recognize that classification changes can take place for nondisciplinary reasons. See N.D.A.C. §§ 4-07-02-17, 4-07-03-10.2.

You next ask whether an employee is entitled to notice and opportunity to be heard in advance of a reorganization.

The administrative rules with respect to classified employees issued by the Central Personnel Division of the Office of Management and Budget do not directly deal with a process for reorganization. Rather, the administrative rules recognize the potential of a reorganization. See, e.g., N.D.A.C. § 4-07-11-02.

The North Dakota Supreme Court has stated:

The term "reorganization" is broad enough to cover a multitude of management decisions for restructuring the allocation of an agency's resources and people to accomplish the agency's mission, but "it is not an enchanted blanket that can be used to cover improper agency action." (Citation omitted.) An agency may reorganize and abolish a position for reasons of economy and efficiency as long as the abolishment is in good faith and not a subterfuge to terminate the individual while leaving the position intact. (Citations omitted.)

Volesky v. North Dakota Game and Fish Dept., 566 N.W.2d 812, 817 (N.D. 1997).

It has also been stated:

A purpose of civil service legislation is to protect efficient public employees from partisan control; it is not designed to prevent reorganization of a department to promote effectiveness and economy. Moreover, civil service laws do not guarantee to officers or employees the tenure of positions which are no longer required. Indeed, it may be stated as a general rule that the power to create a position in the civil service includes the power to abolish the position, particularly where the purpose of the abolishment of such position is that of economy or improvement in the

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public service. Thus, civil service and tenure-of-office statutes do not prevent a bona fide abolition of an office.

15 Am. Jur.2d § 72. Furthermore, it has been stated:

As a general rule, the abolition of a civil service office or position in the interests of economy may be done without notice or hearing to the officer or employee affected thereby, unless a statute requires notice and hearing before the office or position is abolished.

15 Am. Jur.2d § 74. No North Dakota statute or rule requires notice or an opportunity to be heard prior to reorganization of a department.

Sincerely,

Heidi Heitkamp
Attorney General

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