

**LETTER OPINION  
2004-L-45**

June 28, 2004

The Honorable Aaron Krauter  
State Senator  
HC 1, Box 27  
Regent, ND 58650-9721

Dear Senator Krauter:

Thank you for your letter asking whether a regional children's services coordinating committee may give unobligated funds to a donor-advised fund of a charitable organization.

In my opinion, a regional children's services coordinating committee may give funds to a donor-advised fund of a charitable organization, if such funds will be used for children's services programs in accord with the purposes of N.D.C.C. ch. 54-56.

**ANALYSIS**

Eight regional and two tribal children's services coordinating committees have been designated by the state Children's Services Coordinating Committee (CSCC) to distribute federal funds to children's services organizations and programs as authorized by the Legislature. See N.D.C.C. §§ 54-56-03(2), 54-56-04. See also N.D.A.G. 2004-L-37 (explaining the funding allocation to the regional and tribal children's services coordinating committees); 2003 N.D. Sess. Laws ch. 14, §§ 3, 4 (requiring that the committees monitor and coordinate children's services and collaborate with organizations providing services and programs).

Section 54-56-06, N.D.C.C., provides generally that a committee "may not maintain an unobligated fund balance" in excess of \$50,000 at the end of the fiscal year, or June 30. These carry-over funds are for administering committee functions. See Hearing on S.B. 2014 Before the Conference Comm. on Appropriations, 1997 N.D. Leg. (Apr. 2) (Statement of Sen. Solberg).

According to the director of the regional committee in question, the \$50,000 carry-over limit is sufficient only to administer and monitor grants that have already been made but not those that have yet to be made this fiscal year. The regional committee has funds that have not been distributed as grants or obligated for use. In the past, the regional committee utilized the \$50,000 carryover along with newly generated income to administer grants and provide coordination and collaboration for the counties in its region. E-mail from Roxanne Bossert to Senator Aaron Krauter (May 17, 2004). Because federal funding through the CSCC for the regional and tribal children's services committees ends June 30, 2004, ongoing funding is not available and the carry-over limit is a constraint on funds available for administering grants and collaboration programs. See N.D.A.G. 2004-L-37 (explaining that the funding of the CSCC and consequently the regional and tribal committees ends June 30, 2004).

The regional committee proposes to donate or grant the unobligated funds before June 30 to a charitable organization under a donor-advised fund agreement.<sup>1</sup> The charitable organization would, in effect, make grants the regional committee suggests, consistent with its own purposes, and administer and monitor those grants.<sup>2</sup>

This arrangement, in my opinion, is equivalent to the grants made by the regional committee to grantees for children's services programs. The committee is specifically

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<sup>1</sup> See generally, regarding donor-advised funds, Victoria B. Bjorklund, "Current Developments for Charitable Giving to Donor-Advised Funds and Supporting Organizations" (2004) Appendix III, C-1 ("In a donor advised fund, a donor makes a charitable contribution to a sponsoring charity that maintains the donor's contributions in a separately-identified account (each of which is referred to as a 'donor advised fund account'). The sponsoring charity receives and retains exclusive ownership and legal control over amounts contributed to and investment returns of each donor advised fund account. The sponsoring charity allows the donor and persons designated by the donor ('donor advisers') to have advisory privileges with respect to grants from each donor advised fund account. In addition, the sponsoring charity may allow the donor and donor adviser to have advisory privileges with respect to the investment allocation of assets in each donor advised fund account.").

<sup>2</sup> While contributions to a donor-advised fund are irrevocable and subject to control and distribution by the charitable organization, contributions will not jeopardize the tax exempt status of the organization if the contribution is "to be used for a designated purpose . . . and such use is consistent with the transferee [charitable organization's] own exempt purposes." Victoria B. Bjorklund, "Community Foundations and Donor-Advised Funds" (1999) at 18. In accord with this principle, it is my understanding that agreements with the charitable organization can be written to ensure that funds granted to it are required to be used for the purposes authorized in N.D.C.C. ch. 54-56.

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authorized by the CSCC to use CSCC funds for “service programming and grants consistent with the regional plan.” See CSCC Purchase of Service Agreement, paragraph IV; 2003 N.D. Sess. Laws ch. 14, §§ 3, 4 (35 percent of the federal funds generated may be used by the regional and tribal committees for administrative costs and collaboration efforts).

In my opinion, the regional committee may grant funds to a donor-advised fund as long as the funds are designated to be used for the purposes authorized by the Legislature under chapter 54-56.

Sincerely,

Wayne Stenehjem  
Attorney General

tam/vkk

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. See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).