

**LETTER OPINION
2003-L-42**

September 26, 2003

Honorable Jim Kasper
State Representative
1128 Westrac Drive
Fargo, ND 58103-2342

Dear Representative Kasper:

Thank you for your letter asking whether students¹ and faculty of a legal clinic at the University of North Dakota School of Law may lawfully represent individuals having claims against the state or its political subdivisions.

As part of its Clinical Education Program, the University of North Dakota School of Law operates a legal clinic. The Clinical Education Program consists of a civil rights project and civil litigation project, and is an integral part of the School of Law's legal education program. In fact, to be accredited by the American Bar Association (ABA), a law school must offer in its program "live-client or other real-life practice experiences. This might be accomplished through clinics or externships." A.B.A. Standard 302(c)(2). The legal clinic helps fulfill this requirement. The School of Law also offers externships.

Like a law firm, the legal clinic represents individuals. A suit commenced by the legal clinic on behalf of an individual is a suit by the individual, not the legal clinic. Thus, when the legal clinic represents an individual in a lawsuit against the state or a political subdivision, it is a lawsuit between the individual and the state or political subdivision, not the University of North Dakota and the state or political subdivision.² Furthermore, the legal clinic's

¹ The Rule on Limited Practice of Law by Law Students provides eligibility and supervision requirements for law students to participate in some activities involving the practice law.

² There is no constitutional or statutory prohibition forbidding a state agency or political subdivision from suing another state agency or political subdivision. For example, counties, cities and townships have the right to sue in their own name. N.D.C.C. §§ 11-10-01, 40-01-02, and 58-03-01. Generally across the nation, state agencies and political subdivisions have the right to sue one another in vindication of their legal rights and interests. 11 A.L.R. 5th 630, § 2 (1993).

representation of the client does not constitute the state or University's position on the underlying subject matter. N.D. R. Prof. Conduct 1.2(b) ("A lawyer's representation of a client . . . does not constitute an endorsement of the client's political, economic, social or moral views or activities.").

The State Board of Higher Education was created in the Constitution, N.D. Const. art. VIII, § 6, and is charged with the control and administration of state educational institutions, including the University of North Dakota. Id.; see also N.D.C.C. ch. 15-11. The powers granted by the Constitution to the State Board of Higher Education over state educational institutions such as the University of North Dakota are extensive:

The said state board of higher education shall have full authority over the institutions under its control with the right, among its other powers, to prescribe, limit, or modify the courses offered at the several institutions. In furtherance of its powers, the state board of higher education shall have the power to delegate to its employees details of the administration of the institutions under its control. The said state board of higher education shall have full authority to organize or reorganize within constitutional and statutory limitations, the work of each institution under its control, and do each and everything necessary and proper for the efficient and economic administration of said state educational institutions.

N.D. Const. art. VIII, §6(6)(b). These provisions are self-executing, and are "effective without the necessity of legislative action." N.D. Const. art. VIII, § 8.

The State Board of Higher Education has chosen to provide for a School of Law at the University of North Dakota. Within the School of Law, a legal clinic has been established for the purpose of educating law students and giving them experience with the practical aspects of a legal practice, including representation of actual clients. The ABA Committee on Ethics and Professional Responsibility, in an opinion on "Limitations on the Operation of a Legal Clinic by a College of Law," stated that governing bodies of state law school legal clinics should seek to avoid making rules "that prohibit acceptance of controversial clients and cases or that prohibit acceptance of cases aligning the legal aid clinic against public officials, government agencies or influential members of the community." ABA Informal Op. 1208, Feb. 9, 1972. Further, the North Dakota Rules of Professional Conduct support the principle that controversial or unpopular clients should not be denied legal representation. N.D. R. Prof. Conduct 1.2, comment. In determining the type of cases to handle, the legal clinic has not elected to decline cases against the state or its political subdivisions. I have not found anything in the North Dakota Constitution or laws that would require the clinic to decline such cases.

Therefore, it is my opinion that the State Board of Higher Education is acting within the scope of its constitutional authority by providing a legal clinic at the University of North

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Dakota School of Law and permitting students and faculty of the legal clinic to represent individuals having claims against the state or its political subdivisions.

Sincerely,

Wayne Stenehjem
Attorney General

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