

LETTER OPINION
96-L-121

June 11, 1996

Mr. Ron Ness
Deputy Commissioner of Labor
Department of Labor
600 East Boulevard Avenue
Bismarck, ND 58505

Dear Mr. Ness:

Thank you for your May 13, 1996, letter asking whether the University of North Dakota (UND) and the University of North Dakota-Lake Region (UND-LR) are the same institution or agency for purposes of service on the State Employees Compensation Commission under North Dakota Century Code (N.D.C.C.) § 54-06-25(2).

The relevant portion of N.D.C.C. § 54-06-25(2) provides that "[n]o more than one employee from the same institution or agency may serve on the commission at the same time." This provision was part of a substantial revision to the section by the 1995 Legislative Assembly. See 1995 House Bill 1489. However, there was no definition provided in the section for "institution" or "agency."

State "agency" and state "institution" are defined for various purposes in the Century Code. N.D.C.C. § 32-12.2-01(9) provides a specific list of state institutions for state tort liability purposes. It states:

"State institution" means the state hospital, the developmental center at Grafton, the state penitentiary, the Missouri River correctional center, the North Dakota industrial school, the school for the blind, and the school for the deaf.

N.D.C.C. § 32-12.2-01(9).

In contrast, for state travel expense advances, N.D.C.C. § 44-08-04.2(2) defines state agency:

"State agency" means agencies, boards, commissions, bureaus, offices, departments, institutions, and any other state governmental entities, and specifically includes the legislative and judicial branches of state government.

Mr. Ron Ness
June 11, 1996
Page 2

N.D.C.C. § 44-08-04.2(2).

Each of the state's eleven higher educational facilities is listed as an educational institution in N.D.C.C. § 15-10-01, and all of them are under the control and administration of the State Board of Higher Education pursuant to that section and N.D.C.C. § 15-10-11.

Relying on definitions such as that contained in N.D.C.C. § 44-08-04.2(2) where both agencies and institutions are "state agencies," and on the definition of "agency head" contained in N.D.C.C. § 28-32-01(2) where an agency head means "an individual or body of individuals in whom the ultimate legal authority of the agency is vested by law," would make the use of the terms "institution" or "agency" in N.D.C.C. § 54-06-25(2) in conflict. This is apparent because even though UND and UND-LR would be under the final legal authority of the Board of Higher Education as an "agency," each one is also identified as an "institution" by N.D.C.C. § 15-10-01. This would create the anomalous situation where employees of each "institution" could serve on the State Employees Compensation Commission because they were employed by separate "institutions," but, because they were under the control and authority of the same "agency," that is, the Board of Higher Education, they could not serve.

However, statutes are to be interpreted to avoid absurd results. Litten v. City of Fargo, 294 N.W.2d 628, 633 (N.D. 1980).

It is apparent that the 1995 amendment to N.D.C.C. § 54-06-25(2) which added the language in question (1995 N.D. Sess. Laws ch. 501, § 2) was made to avoid filling the State Employees Compensation Commission's four elected positions with persons having the same community of interest. Thus, even though the eleven higher education institutions are part of the same statewide agency, they are identified as eleven separate institutions by N.D.C.C. § 15-10-01. The eleven institutions of higher education each receive a specific appropriation in the higher education appropriation bill. 1995 N.D. Sess. Laws ch. 3. Furthermore, under a statute and constitutional provision that disallows concurrent membership on the State Board of Higher Education to more than one graduate of any one of the institutions under the jurisdiction of the Board, the two-year institutions listed together in N.D.C.C. § 15-10-01(6) as junior colleges and the four-year institutions listed in N.D.C.C. § 15-10-01 are given the same stature. See N.D. Const. art. VIII, § 6(2)(a) and N.D.C.C. § 15-10-02. I understand the current membership of the Board includes a graduate of UND and of Bismarck State College.

Mr. Ron Ness
June 11, 1996
Page 3

It is therefore my opinion that even though all state colleges and universities are under the control of one state agency, all are treated separately as educational institutions under N.D.C.C. § 15-10-01 and are therefore separate institutions under N.D.C.C. § 54-06-25(2) which authorizes membership on the State Employees Compensation Commission by two higher education employees so long as they are not employed by the same one of the eleven institutions identified in N.D.C.C. § 15-10-01.

Over the last few years the Legislature has placed various state institutions under the control of existing state agencies or has created a new agency for their administration. Examples are the State Hospital and State Developmental Center under the Department of Human Services, the School for the Blind, School for the Deaf, and the State Library under the Superintendent of Public Instruction, and the State Penitentiary and Youth Correctional Center under the Department of Corrections and Rehabilitation. These umbrella agencies also have other branches and divisions in addition to the institutions placed under their control, some located in different cities. Because there are only four elected state employee members to the SECC, and numerous combined "agencies" and "institutions" in state government, I encourage you to seek clarifying legislation at the 1997 legislative session that specifies the intended separate nature of the interests that may be represented on the SECC, by clearly defining what constitutes the same "agency" or "institution" for purposes of N.D.C.C. § 54-06-25(2).

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

rel/pg