

LETTER OPINION
97-L-38

April 8, 1997

Mr. Roger Johnson
Commissioner of Agriculture
600 East Boulevard Avenue
Bismarck, ND 58505-0020

Dear Commissioner Johnson:

Thank you for your letter inquiring about the responsibilities of the Commissioner of Agriculture (Commissioner) and the North Dakota State Board of Animal Health (Board) for enforcing livestock and animal health laws.

Your letter asks for general advice regarding the responsibilities of the Commissioner and the Board as outlined in six separate chapters of the North Dakota Century Code, and also asks two specific questions. While the specific questions can be addressed with some certainty, the remainder of your inquiry is very broad and it may be more appropriate to address more specific inquiries within those chapters as they arise. However, I will attempt to provide a brief overview of how the responsibilities are outlined in those chapters.

You have asked who has the authority to hire and fire staff for the Board, including the State Veterinarian, deputy state veterinarian, and the administrative secretary. The appointment of the State Veterinarian and the deputy state veterinarian is addressed in N.D.C.C. § 36-01-05, which provides, in relevant part:

The commissioner shall, with the consent of the board, appoint the state veterinarian and deputy state veterinarian. . . . The commissioner may remove the state veterinarian or deputy state veterinarian for cause. At the request of the board, the commissioner shall deputize persons licensed to practice veterinary medicine in this state as assistant state veterinarians. Deputized persons shall serve during periods of emergency and only for the time period determined by the board.

This statute authorizes the Commissioner to appoint a State Veterinarian and a deputy state veterinarian with the consent of the Board. Accordingly, the Commissioner is ultimately responsible for hiring and appointing the State Veterinarian and deputy state veterinarian, but only when the Board has consented to the

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appointment(s). However, the Commissioner may also remove (or fire) the State Veterinarian or deputy state veterinarian for cause, and does not need the Board's consent for such removal.

While N.D.C.C. ch. 36-01 does not expressly refer to the Board's or Commissioner's employment of an "administrative secretary," certain sections indicate that the Commissioner is authorized to employ such administrative staff as may be necessary to assist the Board in implementing and enforcing N.D.C.C. ch. 36-01. N.D.C.C. § 36-01-03 provides that the Commissioner shall provide clerical services to the Board, which indicates that the Commissioner may use any staff, equipment and administrative resources available within the Department of Agriculture to provide the Board with the clerical services necessary. N.D.C.C. § 36-01-10 provides that the Commissioner may employ officers, agents, or assistants necessary to carry out chapter 36-01, at a compensation to be fixed within the limits of legislative appropriations. Based on this provision, the Commissioner may employ, and exercise any authority which is inherent or necessary to employment, such as hiring, disciplining or firing, any officer, agents, or assistants, including administrative staff, necessary to carry out chapter 36-01, within the appropriated budget limits.

You have also asked when the terms of the legislative members of the Board expire. The 1995 Supplement to the North Dakota Century Code provides two separate versions of N.D.C.C. § 36-01-01, which determines the membership of the Board. The version which was effective until December 31, 1996, provides that the Board consists of nine members, and also provides that "[t]he chairman of the legislative council shall appoint two members for two terms of two years, beginning August 1, 1995. One appointee must be a member of the house of representatives and one appointee must be a member of the senate. The appointees may not represent the same political party." The version which is effective December 31, 1996, provides that the Board consists of seven members appointed by the Governor, and does not include the members from the House of Representatives and Senate appointed by the chairman of the Legislative Council. Because the version which appoints the two legislative members to the Board was only effective until December 31, 1996, and after that time another version governs the Board's membership, the terms of the legislative members expired on December 31, 1996.

A brief overview of North Dakota Century Code chs. 36-01, 36-07, 36-14, 36-14.1, 36-15 and 36-21.1 indicates that, as a general matter, the Board develops policies and rules for addressing animal

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health and controlling and eradicating contagious and infectious diseases among animals throughout the state, while the Commissioner is responsible for receiving and expending funds and licensing. Daily activities and enforcement actions are divided between the Commissioner, the Board and the State Veterinarian.

For example, N.D.C.C. ch. 36-01 gives the Board broad authority to protect the health of domestic animals and nontraditional livestock, and to control, suppress and eradicate contagious and infectious diseases among such animals in the state. N.D.C.C. § 36-01-08 authorizes the Board to make administrative rules to carry out the duties and purposes of title 36. However, the licenses authorized by N.D.C.C. chs. 36-04, 36-05 and 36-07 are granted by the Commissioner. Most inspections authorized by chapters 36-01 and 36-07 are to be conducted by the State Veterinarian or agents of the Commissioner. Enforcement and implementation for N.D.C.C. ch. 36-21.1 are divided between the Board and the Commissioner, with the Board authorized to adopt rules and establish qualifications for investigators, but the Commissioner is authorized to proceed against person(s) for continuous violations of the chapter.

This is just a sample of how some of the responsibilities of the Board and the Commissioner are addressed in these chapters. As I indicated above, it may be more appropriate to address specific questions on a case-by-case basis. My office will certainly assist in addressing such issues as they arise.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

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