

OPINION
75-158

May 8, 1975 (OPINION)

Mr. T. N. Tangedahl

Executive Director

Social Service Board

State Capitol

Bismarck, ND 58505

Dear Mr. Tangedahl:

This is in reply to your letter of April 28, 1975, relative to the authority of the Social Service Board to undertake statewide administration of a Section 8 Existing Housing Program in North Dakota. We understand the Office of Regional Counsel of HUD has concluded that the Social Service Board is eligible to participate and administer the Section 8 Existing Housing Program in North Dakota, as provided by the United States Housing Act of 1937, as amended by the Housing and Community Development Act of 1974. The purpose of the program, briefly stated, is to make assistance payments with respect to existing, newly constructed, and substantially rehabilitated housing. HUD is authorized to enter into annual contributions contracts with public housing agencies. Such agencies then contract with the owners of existing dwelling units to make assistance payments with respect to units leased by low income persons. The public housing agency assumes many administrative responsibilities such as advertising the program, reviewing eligibility of families, and determining amounts of family rents and housing assistance payments. You request our formal opinion on the following questions:

"Do the provisions of N.D.C.C. Chapter 23-11 expressly or impliedly grant the local housing authorities therein created exclusive power to administer housing programs, including the Existing Housing Assistance Payments Program contemplated in Section 8 of the United States Housing Act of 1937, as amended by the Housing and Community Development Act of 1974?

"In the event your response to the above posed question is in the negative, may the Social Service Board of North Dakota administer the Existing Housing Program under the broad powers granted the Board under N.D.C.C. Section 56-06-05.1, particularly Subsections 1 and 2 thereof?"

We note the rules and regulations developed by HUD to implement this program, as published in the January 23, 1975, Federal Register, page 3736, defined a public housing agency to mean: "Any state, county, municipality or other government entity or public body (or agency or instrumentality thereof) which is authorized to engage in or assist in the development or operation of housing for low-income families."

Chapter 23-11 of the North Dakota Century Code certainly gives the local housing authorities created thereunder the power to administer housing programs, including the Existing Housing Assistance Payments Program contemplated in Section 8 of the United States Housing Act of 1937, as amended by the Housing and Community Development Act of 1974. Since the federal regulations apply to state, county, municipality or other governmental entity or public body (or agency or instrumentality thereof), we would necessarily conclude that the Section 8 program is directly within the authority of the local housing authorities and perhaps should properly be administered by them.

However, as you have noted in your letter, Section 5-06-05.1 of the N.D.C.C. provides in part:

"The social service board of North Dakota shall have the following powers and duties to be administered by such board through its state office or through regional offices or otherwise as directed by it:

1. To act as the official agency of the state in any social welfare activity initiated by the federal government not otherwise by law made the responsibility of another state agency.
2. To administer, allocate, and distribute any state and federal funds that may be made available for the purpose of providing financial assistance, care and service to eligible persons and families who do not have sufficient income or other resources to provide a reasonable subsistence compatible with decency and health.

* * * * *

We are aware of no state agency which has a function in this regard. While the housing authorities established pursuant to Chapter 23-11 of the N.D.C.C. are established pursuant to state law, they are not considered as "state agencies" as that term is generally used. In addition, the establishment of such housing authorities is not automatic and is left to the determination of the local governing body or the citizens of the political subdivision. We find nothing in Chapter 23-11 which would indicate that the powers therein granted are exclusive if, in fact, there are other statutes which grant powers in this area to other entities.

We would therefore conclude that the provisions of Chapter 23-11 of the N.D.C.C. do not expressly or impliedly grant exclusive powers to the local housing authorities to administer housing programs including the Existing Housing Assistance Payments Program contemplated by Section 8 of the United States Housing Act of 1937, as amended by the Housing and Community Development Act of 1974.

We further conclude that the Social Service Board would have authority under Section 50-06-05.1, subsections one and two, to administer the Existing Housing Program. In reaching this conclusion we do not purport to recommend that the Social Service Board should or should not undertake the program. That is a matter to be

determined within the sound discretion of the Board and, in exercising that discretion, they should consider the fact that North Dakota has provided for local government entities which are specifically authorized to administer such programs. Our conclusion is based solely upon the broad grant of power given the Social Service Board by statute.

Sincerely yours,

ALLEN I. OLSON

Attorney General