

**OPINION
75-161**

July 22, 1975 (OPINION)

Mr. Rich Slagle
Executive Director
North Dakota Beef Commission
107 South Fifth Street
Bismarck, ND 58501

Dear Mr. Slagle:

This is in response to your letter of June 30, 1975, wherein you request an opinion of this office relative to the Central Personnel System as created by Chapter 487 of the 1975 Session Laws and its application to the provisions of Chapter 4-34 of the North Dakota Century Code, containing the North Dakota Beef Promotion Act. You submit the following in your letter of inquiry:

"This letter is written to ask for your opinion as to whether or not the North Dakota Beef Commission is to be placed under Central Personnel pay recommendations.

Under the law, North Dakota Beef Promotion Act, Chapter 4-34 N.D.C.C. in Section 5, Paragraph 3, it states the Commission shall employ and discharge at its discretion such personnel as the Commission determines are necessary to carry out the purposes of the Act, and to prescribe their duties and powers and to fix their compensation.

We ask your opinion to make it possible to budget salaries for the upcoming year."

Initially we would note that the North Dakota Beef Commission was created by Chapter 61 of the 1973 Session Laws, now codified as Chapter 4-34 of the North Dakota Century Code. Section 4-34-03 recites the creation and provides in part:

"4-34-03. NORTH DAKOTA BEEF COMMISSION - APPOINTMENTS - VACANCIES - QUALIFICATIONS. There is hereby created a North Dakota Beef Commission consisting of nine members who shall be appointed by the governor. The commission shall be composed of three beef producers, one cattle feeder, one dairy producer, one public livestock market representative, and three representatives at large. * * *" (Emphasis supplied)

Accordingly, there remains little question but that the North Dakota Beef Commission constitutes an agency of the State of North Dakota.

In determining whether the Beef Commission comes under the provisions of Chapter 54-44.3 of the North Dakota Century Code, as amended, creating the Central Personnel System, we must examine several of the provisions therein contained. Section 54-44.3-01 provides as follows:

"54-44.3-01. PURPOSE OF CHAPTER. The general purpose of this

chapter is to create the division of central personnel in order to establish a unified system of personnel administration for the classified service of the state based upon merit principles and scientific methods, governing the position classification, pay administration and transfer of its employees. All appointments and promotions to positions in the state classified service shall be made without regard to sex, race, color, national origin, age, religious affiliations, or political opinions on the basis of merit and fitness. (Emphasis supplied)

Going to the definitions as expressed by said Chapter, we note the provisions of Section 54-44.3-02, which provides as follows:

"54-44.3-02. DEFINITIONS. As used in this chapter, unless the context clearly requires otherwise:

1. "Appointing authority" means the authority to appoint positions in the classified service and is reserved to officials and heads of departments and agencies within the government.
2. "Board" means the state personnel board.
3. "Director" means the director of the central personnel division.
4. "Division" means the central personnel division.
5. "Employee" means any person who occupies a position in the classified service.
6. "Officer" means an employee of the state government who is appointed and serves at the pleasure of an official, board, or commission.
7. "Official" means a member of the state government elected by popular vote. (Emphasis supplied)

Section 54-44.3-20 sets forth the categories of positions in the state service and includes all positions in the state service with certain exceptions. The same provides as follows:

54-44.3-20. CATEGORIES OF POSITIONS IN THE STATE SERVICE. All positions in the state service are included in the classified service except:

1. Each official elected by popular vote and each person appointed to fill vacancies in an elective office, one principal assistant and one private secretary.
2. Members of boards and commissions required by law.
3. Administrative heads of departments required by law.
4. Officers and employees of the legislative branch of government.

5. Members of the judicial branch of government of the state of North Dakota and their employees and jurors.
6. Persons temporarily employed in a professional or scientific capacity as consultants or to conduct a temporary and special inquiry, investigation, or examination for the legislative branch of government or a department of the state government.
7. Officers and members of the teaching staff of universities and other institutions of higher education.
8. Positions deemed to be inappropriate to the classified service due to the special nature of the position as determined by the personnel division and approved by the board.
9. The classified employees at the institutions of higher education under the control of the state board of higher education, until July 1, 1976.
0. Members and employees of occupational and professional boards. (Emphasis supplied)

The extent of application of the chapter to employment with the state is set forth under Section 54-44.3-21, which provides as follows:

54-44.3-21. EMPLOYMENT ONLY UNDER APPROVED CLASS TITLE. No person shall be appointed to or employed in a position in the classified service under a class title which has not been approved by the director as appropriate to the duties to be performed. (Emphasis supplied)

In view of the provisions creating and expressing the purpose and extent of application of the Central Personnel System, by definition, categorization and application, it appears clear that all departments and agencies of the State of North Dakota, except those exempted by Section 54-44.3-20, quoted above, are to be governed by the provisions of Chapter 54-44.3 of the North Dakota Century Code. We would note that the State Personnel Board is required to promulgate rules and regulations in achieving the purposes and intents of the Act. These have not yet been promulgated so it is difficult for this office to make any meaningful observations concerning the exact application of those matters which are discretionary with the State Personnel Board.

In direct response to your inquiry, we are of the opinion that the North Dakota Beef Commission, while itself being exempt under the provisions of Subsection (2) of Section 54-44.3-20 of the North Dakota Century Code, as hereinbefore quoted, is an agency of the state contemplated by Chapter 54-44.3, and that employees or appointees of the said commission would be under the Central Personnel System.

We trust this answers your inquiry.

Sincerely yours,

ALLEN I. OLSON

Attorney General