

**OPINION
79-188**

April 24, 1979 (OPINION)

Mr. Lyle A. Limond
Executive Secretary and Treasurer
North Dakota State Board of Medical Examiners
418 E. Rosser
Bismarck, North Dakota 58501

Dear Mr. Limond:

This is in response to your letter of April 10, 1979, wherein you request an opinion of this office relative to the State Board of Medical Examiners and whether the same qualifies as a state agency in two given instances. You submit the following in your letter:

This office is requesting your opinion as to whether the North Dakota State Board of Medical Examiners qualifies as a State Agency in the following two instances:

1. For the purchase of office supplies, equipment and furniture through the State Purchasing Agent. The State Board of Nurse Examiners have informed me that they do so.
2. Is our Board exempt from the state sales tax?

The North Dakota State Board of Medical Examiners has been created by the enactment of Chapter 43-17 of the North Dakota Century Code. Section 43-17-03 recites the creation and provides in part:

43-17-03. STATE BOARD OF MEDICAL EXAMINERS - HOW APPOINTED - QUALIFICATIONS. - The governor shall appoint a state board of medical examiners consisting of ten members, nine of whom shall be M.D.'s and one of whom shall be a D.O., each of whom shall have the following qualifications:

* * *

A person appointed to the board shall qualify by taking the oath required of civil officers.

Section 43-17-25 of the North Dakota Century Code, as amended, provides for a general license fee, the proceeds of which are to be paid to and held by the secretary-treasurer of the board and is to be disbursed by the board in performing its duties. We note also that the board has the authority to enact and enforce rules and regulations under Section 43-17-27; enforce and administer police powers by revocation, suspension or refusal to grant licenses under Section 43-17-31; and is required to make a biennial report to the Governor and Department of Accounts and Purchases by Section 43-17-12, similar to the reports required of constitutional state officers. Further, the board is also given the power, under Chapter 43-17 to administer and enforce the provisions of said chapter, violations of which are punishable under Section 43-17-04 as class B misdemeanors.

On February 20, 1975, this office responded to an inquiry from the North Dakota Dairy Products Promotion Commission, having similar statutory creation and authority, relative to governmental immunity and liability. In the state manager's letter dated February 5, 1975, he asked: "I would like to know if we (Commission) have immunity as a department of the State of North Dakota." In our response we indicated that the Commission was the state itself rather than a political subdivision. (Copy of February 20, 1975, letter is enclosed.) Accordingly, based upon the provisions of Chapter 43-17 of the North Dakota Century Code, and the position taken by this office on February 20, 1975, there remains little question that the North Dakota State Board of Medical Examiners constitutes an agency of the State of North Dakota.

Applying the particular instances specified in your letter of inquiry to our conclusion that the board constitutes an agency of the state, we would first note with regard to the purchase of office supplies, equipment and furniture through the State Purchase Agent, Section 54-44-04 of the North Dakota Century Code, as amended, provides in part:

54-44-04. POWERS AND DUTIES OF THE DIRECTOR OF ACCOUNTS AND PURCHASES. - The director of the Department of accounts and purchases, or such subordinate officer as he shall designate:

* * *

1. Shall be vested with the duties, powers, and responsibilities involved in the operation of a centralized purchasing service. This purchasing service shall include the purchase, lease or rental of all equipment, furniture, fixtures, printing, materials, supplies, insurance and other commodities for all state departments, institutions, offices, and agencies, excluding land, buildings, or space, or the rental thereof and excepting emergency purchases that are impossible of execution by the department of accounts and purchases within the required time, highly specialized equipment which can be better purchased by the department, institution or office which is to utilize such equipment, and such specific items and minor purchases as the director may exempt; (Emphasis Supplied.)

* * *

Accordingly, it would appear that your first question would be answered in the affirmative. We are also enclosing a letter dated October 4, 1977, concerning the State Bar Association of North Dakota, relative to the state's central purchasing services.

With regard to whether your board is exempt from the state sales tax, we would note the provisions of Section 57-39.2-04 of the North Dakota Century Code, as amended, which provides as follows, in part:

57-39.2-04. EXEMPTIONS. - There are specifically exempted from the provisions of this chapter and from computation of the amount of tax imposed by it the following:

* * *

6. Gross receipts from all sales otherwise taxable under this chapter made to the United States or to any state thereof, including the state of North Dakota, or any of the subdivisions, departments, agencies, or institutions thereof. The governmental units exempted by this subsection shall be issued a certificate of exemption by the tax commissioner and such certificate shall be presented to each retailer whenever this exemption is claimed. (Emphasis Supplied.)

* * *

Thus it would appear that having concluded that the North Dakota State Board of Medical Examiners is an agency of the state, those purchases made on behalf of the said board would be exempt from the state sales tax provided for by Chapter 57-39.2 of the North Dakota Century Code.

We trust that the foregoing observations and comments will adequately set forth the opinion of this office upon the matters submitted and will be of interest and assistance to you and that the same will be adequate for your purposes.

Sincerely,

ALLEN I. OLSON

Attorney General