

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 89-11

Date issued: July 17, 1989

Requested by: Milton W. Kane, Commissioner
Department of Veteran's Affairs

- QUESTION PRESENTED -

Whether a public administrator under N.D.C.C. ch. 11-21 is appointed or employed by a governmental agency pursuant to N.D.C.C. ' 37-19.1-02(1) and, therefore, subject to the veterans' employment preference.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that a public administrator is not appointed or employed by a governmental agency under N.D.C.C. ' 37-19.1-02(1) and, therefore, is not subject to the veterans' employment preference.

- ANALYSIS -

The primary question here is whether or not a public administrator is employed or appointed by a governmental agency under N.D.C.C. ' 37-19.1-02, which provides, in relevant part, as follows:

37-19.1-02. Public employment preference to veterans
-- Residency requirements.

1. Veterans who are North Dakota residents are entitled to preference, over all other applicants, in appointment or employment by governmental agencies . .
..

(Emphasis supplied.)

The statute defines a "governmental agency" as "all political subdivisions and any state agency, board, bureau, commission, department, officer, and any state institution or enterprise authorized to employ persons either temporarily or permanently." N.D.C.C. ' 37-19.1-01(1). A "political subdivision" includes "counties, cities, townships, and any other governmental entity created by state law which employs persons either temporarily or permanently." N.D.C.C. ' 37-19.1-01(4).

Public administrators are creations of N.D.C.C. ch. 11-21. They handle the estates of deceased persons in certain specified cases as set out in N.D.C.C.

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' 11-21-05. They are appointed by the county judge, N.D.C.C. ' 11-21-01, are accountable to the county judge, N.D.C.C. " 11-21-02, 11-21-03, and are removable in certain cases by the county judge, N.D.C.C. ' 11-21-14. The public administrator position has many of the same powers as court appointed guardians and conservators. See N.D.C.C. " 11-21-06, 11-21-08. Although a public administrator does give a bond as a county officer, N.D.C.C. ' 11-10-06, the public administrator is not listed as a county officer, N.D.C.C. ' 11-10-02.

N.D.C.C. ch. 37-19.1 does not specifically include county courts within the definition of "political subdivisions," although it could be argued that the county court is a "governmental entity created by state law." Neither are county courts specifically excluded from the veterans' preference law. That law does exclude certain positions, including appointments by the Governor and Legislative Assembly. N.D.C.C. ' 37-19.1-02(5). There is nothing in the legislative history that is helpful as to whether county courts were ever intended to be included or excluded from the veterans' preference law.

A reasonable analogy, however, can be drawn from the open records law, N.D.C.C. ' 44-04-18, which provides that "all records of public or governmental bodies, boards, bureaus, commissions or agencies of the state or any political subdivision of the state, or organizations or agencies supported in whole or in part by public funds, or expending public funds, shall be public records." The North Dakota Supreme Court has held that, with regard to the open records law, county courts are not agencies of the state (and, by implication, are not political subdivisions) and that, therefore, N.D.C.C. ' 44-04-18 does not apply to the county courts. Grand Forks Herald v. Lyons, 101 N.W.2d 543 (N.D. 1960).

The supreme court's reasoning in Lyons appears to be applicable to the veterans' preference law. Therefore, it is my opinion that the North Dakota Supreme Court would also hold that the county court is not subject to N.D.C.C. ch. 37-19.1. Because the public administrator is an appointee of the county court and not the county (which is a political subdivision), the public administrator position is not subject to N.D.C.C. ch. 47-19.1. See also Krohn v. Judicial Magistrate Appointing Commission, 239 N.W.2d 562, 564 (Iowa 1976) (in which the Iowa Supreme Court held that its veterans' preference law did not apply to appointments of members of the judiciary or to judicial officers).

- EFFECT -

This opinion is issued pursuant to N.D.C.C. ' 54-12-01. It governs the actions of public officials until such time as the question is decided by the courts.

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