

LETTER OPINION
95-L-265

November 22, 1995

Mr. John T. Goff
Cass County State's Attorney
P.O. Box 2806
Fargo, ND 58108-2806

Dear Mr. Goff:

Thank you for your letter asking whether a county social service board or a county commission is authorized to unilaterally withdraw from the state merit system and establish its own merit system in compliance with federal requirements.

Prior opinions of this office answer your question in the negative. In a 1981 opinion, the Attorney General determined that county social service boards must follow a merit system of personnel administration, that the State Central Personnel Division is responsible for monitoring and enforcing the merit system standards used by county social service boards, that the North Dakota Personnel Policies Manual was the basis for the merit system standards, and that county social service boards are required to follow all of the policies of the state Personnel Policies Manual. 1981 N.D. Op. Att'y Gen. 413. You should note that references to the North Dakota Personnel Policies Manual should now be interpreted to refer to administrative rules of the North Dakota Central Personnel Division appearing in N.D. Admin. Code art. 4-07.

In a 1992 opinion, the Attorney General determined that where county employees are required to be employed under a merit system of personnel administration, it is the state merit system adopted under N.D.C.C. chs. 54-42 and 54-44.3 that applies. Letter from Attorney General Nicholas J. Spaeth to Stutsman County State's Attorney Wendy Sulewski (March 31, 1992). Copies of these two Attorney General opinions are enclosed for your information. There is no statutory authority for a county social service board or a county commission to withdraw from the state-administered merit system.

Your letter also asks about potential legislative changes to authorize a county's unilateral withdrawal from the state merit system. If a county were contemplating such action, it should make the proposal to its legislative delegation for submission of a bill draft request to the North Dakota Legislative Council. Depending on the standards a county sought to pursue in providing authority to

Mr. John T. Goff
November 22, 1995
Page 2

withdraw from the state merit system, a drafter should consider amending provisions such as N.D.C.C. §§ 50-06-05.1(26), 50-09-02(7), 50-10-06(6) and (7), and N.D.C.C. chs. 54-42 and 54-44.3.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

rel/pg
Enclosures