

LETTER OPINION
2000-L-30

March 9, 2000

Ms. Carol Olson
Executive Director
North Dakota Department of
Human Services
State Capitol
Bismarck, ND 58505

Dear Ms. Olson:

Thank you for your letter asking two questions regarding the North Dakota health care trust fund. Because of the time within which you have requested a response, I will respond to your first question in this letter and will address your second question at a later date.

Your first question pertains to N.D.C.C. § 50-24.4-30. Subsection two of this section requires the Department of Human Services ("Department") to pay each "governmental nursing facility" a certain amount of funds. In turn, each "governmental nursing facility" is required to remit the same amount of funds, less a \$10,000 transaction fee, to the state treasurer. N.D.C.C. § 50-24.4-30(4). A large portion of these payments are deposited in the North Dakota health care trust fund. Id. See also N.D.C.C. § 50-30-02 (creating the North Dakota health care trust fund).

Your question asks whether these facilities may retain funds in excess of the \$10,000 transaction fee authorized in N.D.C.C. § 50-24.4-30(4). The phrase "governmental nursing facility" is defined as a nursing home administered by any political subdivision of this state. N.D.C.C. § 50-24.4-30(1)(b). I understand there are two such facilities in North Dakota, both operated by cities. See 1995 N.D. Op. Att'y Gen. L-99 (Apr. 24 to John Gregg). Accordingly, the facilities are agencies of the two cities.

Cities are creatures of statute and have only the powers that are provided by law. N.D. Const. art. VII, § 2.

"A municipal corporation is an agency of the state. It is purely a creature of statute. . . . It takes its powers from the statutes which give it life, and has none which are not either expressly or impliedly conferred thereby or

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essential to effectuate the purposes of its creation. In defining its powers, the rule of strict construction applies, and any doubt as to their existence or extent must be resolved against the corporation."

Murphy v. City of Bismarck, 109 N.W.2d 635, 642 (N.D. 1961), quoting Lang v. City of Cavalier, 228 N.W. 819, 822 (N.D. 1930).

Under the plain language of N.D.C.C. § 50-24.4-30(4), the nursing facilities operated by the cities are only allowed to retain \$10,000 as a transaction fee for receiving the payments from the Department, and are expressly required to pay the balance of those payments to the state treasurer. Although the source of the funds received from the Department is the federal government, the Legislature has established how those city facilities are required to spend the funds once they are received by enacting N.D.C.C. § 50-24.4-30, and those requirements are binding on the facilities. Therefore, it is my opinion that "governmental nursing facilities" as defined in N.D.C.C. § 50-24.4-30(1)(b), including the cities operating those facilities, are not authorized to retain any additional fee for processing the payments required under that section and are limited to the \$10,000 fee authorized in N.D.C.C. § 50-24.4-30(4).

Sincerely,

Heidi Heitkamp
Attorney General

jcf/vkk