

LETTER OPINION
97-L-64

June 3, 1997

Ms. Elaine Little
Director, Department of Corrections
PO Box 1898
Bismarck, ND 58502-1898

Dear Ms. Little:

Thank you for your letter regarding the State Children's Services Coordinating Committee (CSCC). You specifically ask whether funds held by the twelve regional and tribal committees (RCSCCs) at the end of the 1995-1997 biennium should be included in the allocation for administrative costs provided in 1997 Senate Bill 2014.

The state of North Dakota, through the CSCC, charters or designates organizations as the RCSCC for a particular region or tribe. The relationship between the CSCC and each RCSCC is further defined by a contract. The CSCC distributes "grants" to the RCSCCs and monitors each RCSCC's efforts to coordinate delivery of children's services in its region or tribe. N.D.C.C. §§ 54-56-03, 54-56-04. The RCSCCs coordinate the participation of various children's services providers in "timestudies." Each RCSCC compiles the timestudies generated in its respective region or tribe and submits quarterly claims to the CSCC. The CSCC and Department of Human Services (DHS) process the claims and receive federal reimbursement for the services reported in the timestudies. This process is frequently described as "refinancing."

After both DHS and the CSCC deduct a percentage (currently 10% and 5% respectively) of the federal "refinancing" funds to cover the expenses of the program, the CSCC pays the remaining 85% to the RCSCC that submitted the claim in the form of "grants" as reimbursement for the coordinating services provided under the contract. Each RCSCC returns a portion of these "grants" (currently a minimum of 15%) to the participating entities generating the timestudies, pays its administrative costs for the services required under the contract, and uses the remaining balance to provide grants for children's services in its respective region or tribe.

Viewed in this context, any restrictions imposed by the Legislature on the RCSCCs can best be described as mandated contract terms with the State. Like any other contractual arrangement, consent of both

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parties is required. N.D.C.C. § 9-01-02(2). For example, by accepting the CSCC's designation for the 1997-1999 biennium, and entering into a contract with the CSCC, each RCSCC accepts and agrees to follow the conditions provided in 1997 Senate Bill 2014. However, the rights and responsibilities of each RCSCC in the current biennium are governed by its existing contract with the CSCC and the law in effect when the contract was executed, neither of which place a cap on the administrative costs that may be paid by the RCSCCs.

Section 8 of 1997 Senate Bill 2014 provides a formula for allocating the federal "refinancing" funds estimated to be generated in the 1997-1999 biennium. Under the bill, \$1,080,000 (estimated at 18%) "[o]f the \$6,000,000 of federal funds estimated to be generated as a result of participating entities claiming federal administrative cost reimbursements" during the 1997-1999 biennium is allocated to pay the administrative costs of the RCSCCs. 1997 Senate Bill 2014, § 8. The bill also requires that 62% of each claim be paid by the RCSCCs as grants, including a minimum of 20% to the participating entities generating the timestudies. Id.

You ask whether the administrative cost allocation in 1997 Senate Bill 2014 applies to funds held by the RCSCCs at the end of the 1995-1997 biennium and thus limits administrative cost expenditures by the RCSCCs to that amount. The plain language of the administrative cost allocation in 1997 Senate Bill 2014 is expressly limited to the \$6,000,000 in refinancing funds expected to be generated in the next biennium. See N.D.C.C. § 1-02-05. Section 12 of the bill limits the unobligated fund balance of each RCSCC at the end of each fiscal year, which would apply to previously-held funds as well as funds generated in the first year of the 1997-1999 biennium. However, with this exception, the bill is silent on the permitted use of funds previously earned by the RCSCCs.

In the absence of such a provision, I do not believe the Legislature intended to restrict the use of funds previously earned by and paid to the RCSCCs. Instead, the Legislature limited the unobligated fund balance each RCSCC can have at the end of each fiscal year in the 1997-1999 biennium. The administrative cost allocation operates as a limit on total administrative cost expenditures only if a RCSCC has no other available funds during the 1997-1999 biennium to spend on administrative costs. It is my opinion that any funds held by each RCSCC at the end of the 1995-1997 biennium belong to the RCSCC and may be used for any purpose permitted by law, its articles of incorporation, and its current contract with the CSCC, including the payment of administrative costs incurred during the 1997-1999 biennium.

Sincerely,

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Heidi Heitkamp
ATTORNEY GENERAL

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