

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 99-F-06

Date Issued: May 11, 1999

Requested by: Carol Olson, Executive Director, North Dakota
Department of Human Services

- QUESTIONS PRESENTED -

I.

Whether a county may withdraw from the regional child support office to which it currently belongs and form its own child support enforcement office to fulfill its responsibilities under N.D.C.C. § 50-09-03(5).

II.

Whether the authority of the Department of Human Services to "direct and supervise" the county administration of the child support program under N.D.C.C. § 50-09-03(5) includes control over the operation of the regional child support offices formed by counties to fulfill their responsibilities under that statute.

- ATTORNEY GENERAL'S OPINIONS -

I.

It is my opinion that a county may not form its own child support office to fulfill its responsibilities under N.D.C.C. § 50-09-03(5) unless the North Dakota Department of Human Services changes the state IV-D plan.

II.

It is my opinion that the authority of the North Dakota Department of Human Services to "direct and supervise" county administration of the child support programs under N.D.C.C. § 50-09-03(5) includes control over the operation of the regional child support offices formed by counties to fulfill their responsibilities under that statute, as long as the requirements imposed by the Department are reasonably necessary to ensure the efficient and uniform operation of the state child support program.

- ANALYSES -

I.

The North Dakota Department of Human Services (Department) is the state agency responsible for administering the state child support enforcement program in conformity with title IV-D of the Social Security Act (42 U.S.C. § 651 et seq). N.D.C.C. § 50-09-02(16). See also 45 C.F.R. § 302.12(a) (state IV-D plan must identify the single agency which will be responsible and accountable for operation of the state child support program). The child support enforcement program is administered at the county level "under the direction and supervision of the [Department]." N.D.C.C. § 50-09-03. The request for this opinion describes the relationship of the eight regional enforcement units to the state program:

After [the child support] program was established by the 1977 legislative assembly, the county social service boards, acting under authority provided in N.D.C.C. § 50-09-03(5) and N.D.C.C. ch. 54-40, and with the approval of the department's predecessor agency, the Social Service Board of North Dakota, created eight regional child support offices.

The request also indicates that some counties are considering establishing their own child support offices or joining a different regional office.

The Department is authorized to "take actions reasonably necessary to conform the administration of programs under its supervision and direction to the requirements of . . . title IV-D and the state plan[] submitted thereunder." N.D.C.C. § 50-09-02.1(1). The state IV-D plan describes the operational structure of the state program. The organizational chart lists eight regional offices in specific cities: Bismarck, Devils Lake, Dickinson, Fargo, Grand Forks, Jamestown, Minot, and Williston. Accordingly, because a county forming its own child support office would effectively be creating a ninth child support office, which conflicts with the state IV-D plan, it is my opinion that a county may not form its own child support office unless the Department changes its state IV-D plan.

II.

The second question presented involves the broader question of the extent of the Department's supervisory authority over the county administration of the child support enforcement program in addition

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to maintaining compliance with the state IV-D plan. N.D.C.C. § 50-09-02(16) authorizes the Department to "direct and supervise county administration of [the child support] program." Counties are required to administer the program under the "direction and supervision" of the Department. N.D.C.C. § 50-09-03(5).¹

The phrase "direction and supervision" has been repeatedly used by the Legislature since 1935 to describe the relationship between the Department and the counties in North Dakota with regard to statewide human services programs. See 1935 N.D. Sess. Laws ch. 123, § 1 (amending predecessor to N.D.C.C. § 50-01-09). See also N.D.C.C. §§ 50-01.2-03 (county social service boards), 50-06.2-04 (comprehensive human services), 50-24.1-03.1 (medical support enforcement), 50-24.5-03 (aid to aged, blind, and disabled). However, the phrase has not been defined by statute or by a decision of the North Dakota Supreme Court, so the phrase must be given its plain and ordinary meaning. N.D.C.C. § 1-02-02.

The North Dakota Supreme Court has previously analyzed the plain meaning of "supervision" in Matter of Persons, 334 N.W.2d 471 (N.D. 1983).

Webster's Third New International Dictionary defines supervision as:

"the act, process, or occupation of supervising: direction, inspection, and critical evaluation: oversight"

Similar definitions can also be found in the cases annotated in 40A Words and Phrases, p. 349. See e.g. Vantongerren v. Heffernan, 5 Dak. 180, 188, 38 N.W. 52, 56 (1888) ("Webster says: supervision means 'to oversee for direction; to superintend; to inspect' . . ."). See also Lowe v. Chicago Lumber Co. of Omaha, 135 Neb. 735, 741, 283 N.W. 841, 844 (1939); accord, Continental Casualty Company v. Borthwick, 177 So. 2d 687, 689 (Fla. Dist. Ct. App. 1965) ("To 'supervise' means to oversee for

¹ In addition, the child support enforcement program is a "locally administered economic assistance program" under N.D.C.C. § 50-01.2-00.1, which is subject to the direction and supervision of the Department, N.D.C.C. § 50-01.2-03.2(1), and for which the Department is required to adopt standards under N.D.C.C. § 50-01.2-06.

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direction; to inspect with authority."); Black's Law Dictionary 1290 (5th ed. 1979).

Id. at 474. "Supervise means to direct and inspect the performance of or to superintend." 1995 N.D. Op. Att'y Gen. 29, 31, citing The American Heritage Dictionary 1221 (2d coll. ed. 1991). Thus, the terms "supervision" and "direction" in N.D.C.C. § 50-09-03 have the same general meaning.

"Being under the 'direction' of another means being subject to that person's management, supervision or guidance." 1998 N.D. Op. Att'y Gen. 128, 130, citing The American Heritage Dictionary at 400. "Direct" means to manage or control. The American Heritage Dictionary at 400. Further, "manage" means "[t]o direct or control the use of. . . . To exert control over. . . . To make submissive to one's authority, discipline, or persuasion. . . . To direct or administer." Id. at 761.

Summarizing these definitions, N.D.C.C. §§ 50-09-02(16) and 50-09-03 authorize the Department to control or oversee the counties' administration of the child support enforcement program. This authority is similar to the control or authority a principal has over an agent. In other words, the counties act as arms of the Department in administering the child support enforcement program under N.D.C.C. § 50-09-03(5) and accordingly must follow the directions of the Department regarding the program. This conclusion is supported by a decision of the North Dakota Supreme Court which concluded that a county social service board acting under the "direction and supervision" of the Department was in fact a "unit" of the Department. Falcon v. Williams County Social Service Board, 430 N.W.2d 569, 571 (N.D. 1988).

The State Legislature established the state child support program to comply with federal mandates. The ultimate goal of both Congress and the State Legislature is to have an efficient and effective child support enforcement program. Because the Legislature placed the program under the supervision of the Department instead of imposing the responsibility on the fifty-three counties, in compliance with federal regulations, one can further assume that both the Legislature and the federal government recognized the benefit of applying the child support program uniformly throughout the state.

Considering these purposes of the child support program, one area in which the Department may direct and supervise the county administration of the child support program would be the interpretation of state law regarding child support enforcement.

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When questions arise on the best way for counties to implement the legal requirements of the child support program, the Department is in the best position to resolve those questions in a way which will promote the efficient and uniform operation of the state program in compliance with state and federal law. The Legislature has acknowledged this function by authorizing the Department to issue policy manuals, forms, and program directives. N.D.C.C. § 50-09-02.1(3).

Other examples of areas in which the Department could direct and supervise county administration of the child support program would be the appropriate number of staff in various positions based on the caseload in a particular region, how records should be maintained so a file does not need to be recreated each time a custodial parent moves to a different region of the state, a short amount of advance notice before a regional office makes a material change in its administration of the program, and any deadlines for taking certain administrative actions so custodial parents can expect a comparable level of enforcement services regardless of the region of the state in which they live.

In directing and supervising the county administration of the child support program, the Department must keep in mind that the Legislature gave counties the authority and responsibility to administer the program. N.D.C.C. § 50-09-03. Accordingly, in the absence of direction by the Department, the counties are entitled and required to administer the program. The Department cannot replace the counties as the governmental agency administering the child support program on a day-to-day basis. However, it is my opinion that the authority of the Department to "direct and supervise" county administration of the child support programs under N.D.C.C. § 50-09-03(5) includes control over the operation of the regional child support offices formed by counties to fulfill their responsibilities under that statute, as long as the requirements imposed by the Department are reasonably necessary to ensure the efficient and uniform operation of the state child support program.

- 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 questions presented are decided by the courts.

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