

N.D.A.G. Letter to Sulewski (March 31, 1992)

March 31, 1992

Ms. Wendy Sulewski
Stutsman County State's Attorney
511 Second Avenue SE
Jamestown, ND 58401

Dear Ms. Sulewski:

Thank you for your February 3, 1992, letter asking whether a county which has adopted personnel policies including a salary increase policy may exclude from those policies certain county employees employed under a state administered merit system if the state policy and salary administration rules are adhered to for those excluded employees.

Merit system employees are those required by state or federal law to be employed under a merit system or personnel administration. In North Dakota county employees employed under the merit system are commonly required to be so employed because of federal rule.

The policies and rules of the Central Personnel Division qualify as the form of compliance with federal grant in aid programs. See 42 C.F.R. pt. 432 (Medicaid), N.D.C.C. ch. 54-42 and N.D.C.C. § 54-44.3-17.

The state Central Personnel Division policies and rules apply to county merit system employees. 1981 N.D. Op. Att'y Gen. 413. If there is a conflict between state Central Personnel Division policies or rules and county policies concerning personnel administration, the state policies or rules govern. Letter from Attorney General Nicholas J. Spaeth to Carol S. Nelson, Barnes County State's Attorney, July 7, 1989.

Recognizing conflicts between county and state personnel policies or rules for merit system employees may exist, there is no prohibition against a county adopting policies that exclude county merit system employees from the county personnel system. However, such a policy should be adopted with caution because all county employees need to be supervised with respect to personnel administration, including those policies concerning pay administration. If a county embarks on a program to exclude county merit system employees from the county personnel policies, the county must assure that county merit system agencies have discretion to implement pay increase and other pay administration matters according to policy and rules adopted by the Central Personnel Division. This is necessary to comply with merit system standards on equitable compensation under 5 C.F.R. § 900.603(b).

It is my opinion that a county may adopt personnel policies and wage increase measures which are different for merit system county employees and non-merit system county

employees, provided that Central Personnel Division policies and rules are applied with respect to merit system county employees.

Operating under separate pay administration rules has the potential for causing discord between county merit system and nonmerit system employees performing comparable work. The potential for actual or alleged inequity is likely to increase under separate pay administrative rules. The separate pay administration rules must be developed and operated with great care in order to avoid these problems.

I hope this opinion satisfactorily responds to your question.

Sincerely,

Nicholas J. Spaeth

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