

OPINION
62-270

November 19, 1962 (OPINION)

VOCATIONAL REHABILITATION CENTER

RE: Eligibility for Services

This is in response to your letter of November 8, 1962.

Your letter stated substantially the following:

The Division of Vocational Rehabilitation is currently setting up a special program for the orientation and travel training of newly blinded individuals in conjunction with the Medical Center Rehabilitation Unit. Our specialist is highly trained and is recognized in other states for his training background. They are therefore asking me whether they can send some of their people to North Dakota for this type of service.

I would like to receive your opinion as to whether we could under existing laws set up a fee and collect for this type of service from agencies outside of the state North Dakota. I should also wish to ask whether under existing laws we would be able to charge fees to agencies within the state and individuals within the state.* * *."

Two sections of the law appear applicable to your questions and I quote them as follows:

15-20-14. ADMINISTRATION OF VOCATIONAL REHABILITATION. Except as otherwise provided by law, the state board acting through the office of the superintendent of public instruction, and through the division, shall provide vocational rehabilitation services to disabled individuals determined by the director to be eligible therefor. In carrying out the purposes of this chapter, the division among other things, may:

1. Cooperate with other departments, agencies, and institutions, both public and private, in providing for the vocational rehabilitation of disabled individuals, in studying the problems involved therein, and in establishing, developing and providing, in conformity with the purposes of this chapter, such programs, facilities and services as may be necessary or desirable;
2. Enter into reciprocal agreements with other states to provide for the vocational rehabilitation of residents of the states concerned;
3. Conduct research and compile statistics relating to the vocational rehabilitation of disabled individuals."

15-20-18. REHABILITATION SERVICES PROVIDED TO ANY DISABLED

INDIVIDUAL - ELIGIBILITY. Vocational rehabilitation services shall be provided to any disabled individual who is:

1. A resident of the state at the time of filing his application therefor and whose vocational rehabilitation, the director determines after full investigation, can be satisfactorily achieved; or
2. Eligible therefor under the terms of an agreement with another state or with the federal government."

You will note that section 15-20-14, subsection 2, authorizes the division to enter into reciprocal agreements with other states. Traditionally, the meaning of reciprocity is the conferring of a right in exchange for a similar right; an interchange of favors or mutuality. If the term were to be construed in a strict sense, the payment for the services would not constitute reciprocity. However, we feel, upon a reading of whole chapter that a broader interpretation is manifested. Indeed, the chapter requires cooperation with other departments and agencies of this state as well as provision for vocation rehabilitation of nonresidents based upon such agreements. Based upon the language of this chapter, it is our opinion that you may accept nonresidents for rehabilitation, and it further follows that inasmuch as the division is tax supported, a fee must be charged to such nonresidents unless, of course, a bona fide exchange of facilities is obtained by mutual agreement.

In response to your second question concerning whether or not a fee may be charged to in-state institutions and individuals, we make the following comment: We feel that the nature of the agency involved is material to our answer. An agency's services may be extended on the basis of indigence or of right. The School for the Blind, for example, is not based entirely on indigence but upon the inability of the child to secure an adequate education in our public school system. It is probable that some students attending the School for the Blind are not indigents and that some are.

It is our opinion that as long as the service of the vocational rehabilitation center is not incorporated into the curriculum of the School for the Blind, and provided as a standard part of the education received, that students obtaining your specialized service are doing so on an individual basis. It follows then that whether or not a fee may be charged would depend upon the indigence of the individual.

LESLIE R. BURGUM

Attorney General