OPINION
63-88

March 13, 1963 (OPINION)

COUNTY WELFARE BOARD

RE: Powers and Duties - Related to County Commissioners

This office acknowledges receipt of your letter of March 7, 1963, in which you request the opinion of this office on certain matters related to the powers and duties of the county welfare board of your county.

In your letter you state that the board of county commissioners of Richland County recently adopted a resolution requiring all county employees, except elected officials, to retire at the age of 65. You further state that the director of the county welfare board takes exception to this resolution; that he contends that the county commissioners have no control over the salaries of employees of the county welfare board.

Section 50-01-09 of the North Dakota Century Code reads as follows:

> DUTIES OF COUNTY WELFARE BOARD. The county welfare board of each county in this state shall have the following duties:
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> 1. To supervise and direct all relief and welfare activities conducted by the county including the investigation of applications for poor relief or other public assistance;
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> 2. To supervise and administer, under the direction and supervision of the public welfare board of North Dakota, such relief and welfare activities in the county as may be financed in whole or in part by or with funds allocated or distributed by the public welfare board of North Dakota;
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> 3. To aid and assist in every possible way to coordinate and bring about an efficient operation of all relief and welfare activities within the county by private as well as public organizations engaged in relief or welfare work."

Based upon the above section, it is the opinion of this office that the retirement of the director of a county welfare board, as well as any other employee of the board, falls within the jurisdiction of said board. The board is created under the provisions of section 50-01-07 of the North Dakota Century Code and is set up by the joint efforts of the county commissioners and the public welfare board of North Dakota. It would be the view of this office that the board is charged with the employment of its own workers and would also determine when their employment should be terminated and when any employee should retire by virtue of having reached a certain age limit.

In the second paragraph of your letter you state that the county commissioners of your county would like to know whether they have the authority to freeze the salaries of the employees of the welfare office.

For the reasons given above, it is the opinion of this office that the salaries would be fixed by the county welfare board under the minimum and maximum limitations prescribed by the merit system council of North Dakota. The merit system council is set up under the provisions of Chapter 54-42 of the North Dakota Century Code. Up to the present time, the merit system council has not established an age for retirement. Taking these facts into consideration, the county commissioners of Richland County could not freeze the salaries of the employees of the county welfare board nor establish a retirement age limitation.

in the last paragraph of your letter you ask as to how much control the county commissioners have over the welfare board, its staff members, its functions, and its expenditures. You state that the big concern of the county commissioners is whether or not they have the right to reject bills for assistance if they do not feel they are proper.

It is the opinion of this office that the bills incurred by the county welfare board are to be audited and allowed by the welfare board without the intervention of the county commissioners. It is the function of the county commissioners to determine that the bills are properly audited and allowed as to form and regularity, but they do not pass on the merits of the bills.

The case of Fuller v. Finger, et al., 69 N.D. 646; 289 N.W. 805, deals with the relation of the board of county commissioners and the welfare board in matters of public relief. In that opinion the Supreme Court said:

> Moneys allocated to a county from the state and Federal funds are paid to the county treasurer and deposited in the 'Social Welfare Fund' of the county. Disbursements of this fund are not made unless authorized by the County Welfare Board. Bills covering the expenditures of the County Welfare Board, which necessarily include salaries and per diem paid to employees, are presented to the county welfare board for audit and approval. When so audited and approved, they are presented to the county auditor, whose duty it is to submit them to the Board of County Commissioners for its approval. When so approved, it is the duty of the auditor to issue his warrants on the 'Social Welfare Fund,' which warrants are to be paid by the county treasurer out of that fund.
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> Under the provisions of the State Plan agreed to by the Board of County Commissioners, it will be noted that the bills to be paid from the 'Social Welfare Fund' are the relief orders 'and bills covering other expenditures of the County Welfare Board,' which bills must be audited by the County Welfare Board and presented to the county auditor, as before stated. The Board of County Commissioners has no control over the administration of such moneys, except to see that claims are properly presented, audited, and allowed so as to coordinate relief work

and to protect the county auditor and county treasurer."

What we have stated in this opinion is conditioned by Chapter 50-03 of the North Dakota Century Code which is entitled "County Poor Relief Fund." In the case of Fuller v. Finger, et al., the Supreme Court said that the county poor relief fund is under the control and direction of the board of county commissioners. This, of course, is apparent from Chapter 50-03, and we know of no change in the law that would diminish the powers of the county commissioners in the control of this fund. So long as the moneys raised by a county tax levy remain in this fund, they are under the control of the county commissioners to the social welfare fund they pass to the control of the county welfare board. It is our understanding that there are two funds involved here. One is the social welfare fund containing moneys contributed by the state and federal governments, as well as any other funds that may be transferred thereto, and the county poor relief fund. It is apparent that if the county commissioners refuse to transfer any moneys from the county poor relief fund to the social welfare fund, the situation could develop which would be resolved only by appropriate court action.

The circumstances which you relate are pretty much covered by this case of Fuller v. Finger; and under date of October 8, 1951, this office issued an opinion to the executive director of the Public Welfare Board of North Dakota which is pertinent to your situation there in Richland County. We enclose a copy of said opinion herewith.

We trust that this opinion may be of some service to you and if there are any points on which you are in doubt, we will be glad to hear from you further.

HELGI JOHANNESON

Attorney General