

OPINION
65-154

July 28, 1965 (OPINION)

Mr. T. L. Degnan, Member

Medical Center Advisory Council

Grand Forks, North Dakota

RE: Medical Center - Advisory Council - Composition of Board

This is in reply to your letter of July 23, 1965, relative to section 15-52-03 of the North Dakota Century Code as amended by the 1965 Legislative Assembly. You state you are a member of the Medical Center Advisory Council and the Council has presented the following questions:

1. Is our board presently properly constituted, or do all members have to be reappointed and redesignated again?
2. At one place in the first paragraph the law says that Council shall consist of seven members, two to be named by the Governor. In paragraph 4 of the same section the statute refers to 'the three members appointed by the governor * * *'.

There are actually three public members on the board at this time, and we would appreciate your informing us how the inconsistency in the numbers in the new reenactment affect our appointive members, representing agriculture, the public and labor. Of course it is obvious that if the section means three members to be named by the governor, that there would be eight members on the board rather than seven.

3. Under the old section the Council has a member, Mr. James O. Fine of the State Board of Administration. Since the reenactment does not list the Board of Administration as being entitled to membership, are we to assume that Mr. Fine's membership in the Council terminated as of the 31st day of June, 1965?"

Section 15-52-03 of the North Dakota Century Code, as amended by section 41 of Chapter 203 of the 1965 Session Laws, provides insofar as is pertinent:

* * * The medical center advisory council shall consist of seven members, two to be named by the governor, and one to be named by and from the membership of each of the following: The Public Welfare Board of North Dakota, the State Board of Higher Education, or such boards or departments as shall succeed them or any of them; the State Health Officer of the North Dakota State Department of Health; one shall be selected by the North

Dakota State Medical Association; one shall be selected by the North Dakota Hospital Association.

The representatives named by the state agencies and boards above referred to shall be selected to serve as members of the Medical Center Advisory Council for periods of at least one year, but in no instance may they serve longer than their term of office on the public agency.

The representatives from the North Dakota State Medical Association and the North Dakota Hospital Association shall serve a term of three years or until their successors are named and qualified.

The three* members appointed by the governor shall serve for three-year terms. Of the persons appointed by the governor one shall be a representative of agriculture, one a representative of labor and one a representative of the public at large * * *."

A footnote to the provision relative to three members appointed by the Governor is included in the 1965 Pocket Supplement to the North Dakota Century Code. The footnote states:

The 1965 regular legislative assembly amended the first paragraph of Section 15-52-03 to provide that the governor appoint two members to the medical advisory council, but inadvertently omitted the corresponding amendment necessary to the fourth paragraph of Section 15-52-03.F"

Prior to the amendment by the 1965 Legislature, section 15-52-03 of the North Dakota Century Code provided that the Medical Center Advisory Council should consist of nine members; three to be named by the Governor, and one to be named by and from the membership of each of the following: The Board of Administration; the Public Welfare Board of North Dakota; the State Board of Higher Education, or such boards or departments as shall succeed them or any of them; the State Health Officer of the North Dakota State Department of Health; one to be selected by the North Dakota State Medical Association; and one to be selected by the North Dakota Hospital Association.

The obvious intent of the Legislature by the enactment of the amendment was to decrease the size of the Council from nine members to seven members. The provision in the statute, as amended, specifying a membership of seven members would appear to be controlling over the provision referring to the appointment of three members by the Governor. In direct reply to your questions:

1. It is our opinion that all members of the Council need not be reappointed and that those members specified by section 15-52-03, as amended, who presently are members of the Council would continue in this capacity. It is, however, also our opinion that the Council, as of July 1, 1965, is composed only of seven members as provided by statute.
2. It is our opinion the Governor appoints only two members to

the Council. The language referring to the appointment of three members by the Governor is not the direct authority for the appointment. Direct authority for the appointment is contained in the provision relating to the appointment of two members by the Governor.

The obvious difficulty with this procedure is not the reduction in the number of appointments from three to two, but the fact the statute still provides that the appointments are to represent agriculture, the public and labor. It would appear that the discretion must rest with the Governor in the appointments and that such appointments must represent agriculture, labor and the public in such manner as the Governor determines. Since he will make only two appointments, it is obvious there will not be a separate representative from each of the three categories.

3. The provision for representation from the State Board of Administration has been deleted from the statute. It is therefore our opinion that no member from the State Board of Administration is to serve on the Council. Such representation terminated on June 30, 1965.

HELGI JOHANNESON

Attorney General