

**OPINION
68-210**

May 9, 1968 (OPINION)

Honorable Curtis Olson

State Auditor

RE: State Auditor - Examination of Books - Professional Boards

This is in reply to your letter in which you mention the various professional groups referred to in Title 43 of the North Dakota Century Code and to your duties as set out under Section 54-10-01 thereof.

You also make reference to Section 186 of the North Dakota Constitution and the proposed amendments to said Act. You also state that some of the professional groups are being audited by your department but some are not. You then ask whether or not the professional regulatory boards mentioned in Title 43 are in any manner considered "state government" or "state agencies" as those terms are used in Section 54-10-01. You also inquire if the proposed constitutional amendments to Section 186 of the Constitution would alter you duties and responsibilities.

We have been unable to find any statutory definition of the terms "state government" as found in subsection 1 of Section 54-10-01, and the term "state agency" as found in subsection 2 thereof. "State government" embraces all departments, instrumentalities, institutions, etc. of the state which exercise some of the sovereign authority of the state. The same statement would apply to "state agencies."

Most of the legislation found in Title 43 pertains to professional groups. In the various chapters, each pertaining to a specific professional group, the Legislature created a board to administer the laws. The law also determines the membership on the board and the authority of the board. Such boards are authorized to regulate the professional persons within its group. The board, by law, is also authorized to exact a license or tax fee as a condition to practice a certain profession. In most instances the action of the board is reviewable, that is, the aggrieved person may appeal the decision to the courts. Such boards are regulatory and administrative. They also administer the laws relating to the right to practice in a certain profession. The board is an administrative agency. All of such boards are governmental or state agencies or instrumentalities. They exercise a part of the sovereign powers of the state. Unlike a private board or agency, the Legislature here actually created the board and vested the authority to make appointments to the board to certain officials. Many of such appointments are vested in the executive department (governor). The boards referred to here are not created pursuant to permissive legislation but, in fact, are created by the Legislature.

By every reasonable test we come to the conclusion that the professional boards created under Title 43 are instrumentalities of

the state or state agencies. We do not believe that merely because some agencies (boards) by law are not specifically required to deposit all of their moneys with the state treasurer that such agencies or boards are not state agencies or instrumentalities. That fact alone does not constitute a legal basis for determining whether or not same constitutes a state agency or instrumentality. For that matter, Section 186 of the Constitution excludes certain organizations from the depositing requirement.

The proposed amendments, without any legislative action, will not substantially change the duties and functions of the state auditor with reference to the "professional groups." The Legislature may, under either the existing provisions of Section 186 or under the proposed provisions, enlarge or diminish upon the duties or function of the state auditor with reference to the professional groups.

Under existing statutes all of the professional groups that come within the general discussion above would come within the term "state agency" as used in Section 54-10-01 and, as such, it is the duty and function of the state auditor to audit and examine the financial transactions and records of such "state agency."

HELGI JOHANNESON

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