

**OPINION
68-76**

March 26, 1968 (OPINION)

Mr. Martin N. Gronvold, Executive Director

Employment Security Bureau

RE: Employment security bureau - Executive director - Authority

In your letter of March 11, 1968, you mention that you are becoming more and more involved with agreements and contracts with numerous federal programs relating to the activities of the Unemployment Compensation Division and the Employment Service Division. Presumably the programs to which you make reference arise out of federal legislation. We are also assuming that these programs must be activated and maintained by the respective states pursuant to congressional legislation.

Some of the programs that you are about to entertain relate to training various individuals under the "Aid to Families with Dependent Children Program" supervised by the State Welfare Department. You then ask for an opinion on the following:

"As Title 52 N.D.C.C., does not make specific mention of any such authority for any individual, I respectfully request that you indicate: (1) whether or not the Executive Director of the Employment Security Bureau does have such authority; (2) does any other member of the Agency's staff have authority without delegation to make such contracts; (3) if the authority is available to the Executive Director, can such authority be delegated to others in the employ of the Agency."

Both the Unemployment Compensation Division and the Employment Service Division, pursuant to federal legislation, require that they be attached to some state agency or department for supervision. To satisfy this requirement they were placed under the supervision of the Workmen's Compensation Bureau. However, the North Dakota Legislature in 1965, by Chapter 333, created the Employment Security Bureau. The Act created the Employment Security Bureau and the duties relating to the Director can be found in Section 52-02-01, as amended, of the 1967 Supplement to the North Dakota Century Code. At the same time, the Legislature amended other provisions in Title 52 so as to bring other related provisions in conformity with the provisions of Section 52-02-01. It also repealed several sections in Chapter 52-08 pertaining to the North Dakota State Employment Service.

In reviewing these various provisions, it becomes quite clear that the Legislature intended to create a state agency which would be responsible for coordinating, supervising and directing the activities of the Unemployment Compensation Division and the Employment Service Division, and other activities related to Social Security.

The head of the newly created Employment Security Bureau is the

Executive Director. He is charged with the responsibility of administering the programs that come within the functions of the Bureau. These programs include the Unemployment Compensation Division, Employment Service Division and Social Security activities. (See Sections 52-20-01(2) and 59-09-03 of the North Dakota Century Code.)

It is an acknowledged fact that responsibility and authority go hand in hand. One must be commensurate with the other. It is inconceivable that the Legislature would create a department and charge it with certain responsibilities but not grant authority commensurate to the responsibilities. In this instance the legislative expression indicates that the Executive Director is charged with this responsibility. It has frequently been acknowledged that responsibility as such may not be delegated. Duties and functions may be delegated but not responsibilities. An individual may delegate responsibilities to some other person but this does not relieve such person of the initial responsibilities placed upon him even though the person to whom such responsibility is delegated is in turn responsible to him.

Thus, in direct response to Question No. 1, it is our opinion that the Executive Director of the Security Bureau has the authority to enter into agreements with the federal government to carry out certain functions as required and pursuant to federal legislation on such subjects.

In direct response to Question No. 2, members of the Employment Security Bureau staff have only such authority as the Executive Director may wish to delegate to them. It is conceived that the federal agencies representing the United States Government would not enter into any contract with a staff member unless the staff member has written authority to do so.

In response to Question No. 3, the Executive Director may delegate certain duties and functions to others in his employ with such limitations or directions as he may deem advisable. This, however, does not mean that those who have business activities with the Bureau must accept such delegation. The federal agencies or the United States Government can insist that agreements and other related items be negotiated and entered into by the Executive Director. Any person to whom authority has been delegated to perform certain functions has only such authority as is delegated to him.

What has been said with reference to delegation of authority also applies to the attorney designated to represent the department. The North Dakota Supreme Court has held that the relationship between the attorney of a department and the department itself is that of attorney and client. The attorney has only such authority as the client has entrusted or delegated to him on matters relating to substantive decisions.

The foregoing conclusions are reached on the basis that the statutes on the subject matter are silent. If the Legislature were to impose certain functions and duties upon one division or the other, it would be controlling.

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Attorney General