

**OPINION  
73-418**

October 9, 1973           (OPINION)

Mr. James O. Fine  
Executive Director  
Department of Vocational  
    Rehabilitation  
P. O. Box 1037  
Bismarck, ND 58501

Dear Mr. Fine:

This is in reply to your letter of September 28, 1973, relative to certain contracts between the Secretary of Health, Education and Welfare and the Division of Vocational Rehabilitation. You state the following facts and questions:

"Chapter 383 of the 1973 Session Laws transferred the responsibility for the State Division of Vocational Rehabilitation from the State Board of Public School Education to the Social Service Board of North Dakota. Prior to July 1, 1973, the effective date of transfer, the director of the Division of Vocational Rehabilitation, with the approval and authorization of the State Board of Public School Education, entered into agreements with the Secretary of Health, Education and Welfare whereby the Board of Public School Education through the Division of Vocational Rehabilitation was bound to fulfill certain responsibilities and requirements set forth in such agreements.

"In 1966 the Division of Vocational Rehabilitation renegotiated an agreement with the Secretary of Health, Education and Welfare whereby it would make disability determinations under Title II of the Social Security Act (Federal Old Age, Survivors and Disability Insurance Benefits). The agreement was executed pursuant to Section 221 of the Act and was last formally modified on July 15, 1970. The Division of Vocational Rehabilitation continues to make disability determinations pursuant to the terms and conditions of the 1966 agreement as amended.

"Additionally, the State Division of Vocational Rehabilitation operates under what is known as a 'State Plan'. Generally, the contents of the State Plan are dictated by the provisions of Section 35 of 29 United States Code. In order to qualify for federal payments, the State Agency must have in effect and operations a State Plan approved by the Secretary of Health, Education and Welfare. The plan is modified from time to time and such modifications must receive the approval of the Secretary prior to implementation. Pursuant to the plan submitted by the State Board of Public School Education, certain duties and obligations in connection with the operation of a Vocational Rehabilitation program in the state were assumed by the State Agency. The Division continues to operate

under said State Plan.

"Your formal opinion is requested in response to the following inquiries:

1. Upon the transfer of the responsibilities of the Division of Vocational Rehabilitation from the Board of Public School Education to the Social Service Board, did the Social Service Board acquire and assume by operation of law or otherwise all of the contractual rights and responsibilities in force between the Board of Public School Education and the Federal Government relating to the operation of the Vocational Rehabilitation Program in the state?
2. In the event the response to question one is in the negative, what steps must be taken by the Social Service Board in order that privity of contract be established between the Social Service Board and the Secretary of Health, Education and Welfare in connection with agreements previously executed by the Board of Public School Education and the Secretary of HEW?

"Section 1633 of Public Law 92-603 authorizes the Secretary of Health, Education and Welfare to make arrangements with agencies such as the Division of Vocational Rehabilitation in order that such agencies make determinations of blindness and disability with respect to eligibility for Title XVI (Supplemental Security Income) benefits. Such arrangements are subject to the same conditions provided with respect to disability determinations under Section 221 of the Social Security Act.

"Your formal opinion is requested in response to the following question:

3. Is the Division of Vocational Rehabilitation, with the formal approval and authorization of the Social Service Board, authorized by State Law to enter into an agreement with the Secretary of HEW whereby the state agency agrees to make disability determinations under Title XVI of the Social Security Act, assuming that the Social Service Board is to receive from the Federal Government, by way of advance or reimbursement, 100 percent of the cost of carrying out such an agreement?

"Your formal opinion in response to the above posed inquiries will be greatly appreciated."

Our replies to the above stated questions are in the order presented.

Prior to giving our position on the questions presented in your letter, we must note certain factors which could alter such position. Copies of the contracts to which you refer are not included with your letter. It is therefore possible that certain provisions of which we are unaware in such contract, might alter the situation. We would further note that we are not in a position to predict or dictate the

attitude of the Secretary of Health, Education and Welfare with respect to this matter. Therefore, our opinion cannot be determined to be binding upon the Secretary.

With respect to your first question, insofar as the State of North Dakota is concerned, it is our opinion that upon the transfer of the responsibilities for the Division of Vocational Rehabilitation from the Board of Public School Education to the Social Service Board, the Social Service Board did acquire and assume all of the contractual rights and responsibilities in force between the Board of Public School Education and the Federal Government relating to the operation of the Vocational Rehabilitation program in the state.

The obvious intent of the legislature in enacting Chapter 383, 1973 Session Laws was not to disrupt the program operated by the Division of Vocational Education. See page 53 of the 1973 Report of the Legislative Council with respect to the reasons for the introduction of the bill which was enacted and subsequently became Chapter 383 of the 1973 Session Laws. Furthermore, whatever the rationale for the transfer of authority by the Legislature, the Legislature cannot negate existing contractual obligations of the State of North Dakota or its agencies which obligations were valid at the time they were incurred. We do not have the specific contract in issue before us. However assuming it does impose a continuing contractual liability upon the Division of Vocational Rehabilitation, the transfer of responsibility from the State Board of Public School Education to the Social Services Board could not negate the duties required to be performed under the contract.

With respect to your second question, it would appear to require no answer in view of our response to the first question. However we would note, despite the response to the first question, that it might be advisable if the federal government is agreeable to execute a new contract to reflect the fact that the Division of Vocational Rehabilitation is now under the jurisdiction of the Social Service Board.

With regard to your third question, Section 50-06.1-02 of the North Dakota Century Code, as amended, provides:

"ACCEPTANCE OF BENEFITS OF FEDERAL ACTS IN VOCATIONAL REHABILITATION - COOPERATION WITH FEDERAL GOVERNMENT. The state of North Dakota hereby accepts all of the provisions and benefits of the acts of Congress to assist states to provide for the vocational rehabilitation of disabled persons in accordance with state statutes and policies of the state board, and the state board shall comply with such conditions as may be necessary to secure the full benefit of such acts. The state board shall cooperate pursuant to agreement with the federal government in carrying out the purposes of any federal act pertaining to vocational rehabilitation, and shall adopt such methods of administration as may be found by the federal government to be necessary for the proper and efficient operation of such agreement."

The above stated section, enacted by Chapter 383 of the 1973 Session Laws, is not unlike subSection 2 of Section 15-20.1-04 of the North

Dakota Century Code which was repealed by said act. The obvious purpose of the repeal and reenactment was to place the statute in the proper Chapter of the North Dakota Century Code, in view of the transfer of responsibility from the Board of Public School Education to the Social Service Board. It appears the agreement in this instance is similar to that agreement referred to in the first question and which agreement has been in effect since 1966, although last formally modified in 1970. Presumably the Legislature had knowledge of such agreement and acquiesced in same. Since the statute under which that agreement was entered into and Section 50-06.1-02 are similar, we would assume the same acquiescence in this instance. Furthermore, while the federal statutes referred to involve the social security act, they are concerned with disabled persons who would ordinarily be within the jurisdiction of the Division of Vocational Rehabilitation. We therefore believe the disability determinations might very well "pertain to vocational rehabilitation" as provided in Section 50-06.1-02, quoted above.

It is therefore our opinion that the Division of Vocational Rehabilitation, with the formal approval and authorization of the Social Service Board, is authorized by state law to enter into an agreement with the Secretary of HEW whereby the division agrees to make disability determinations under Title XVI of the Social Security Act.

Sincerely yours,

Allen I. Olson

Attorney General