

OPINION
77-25

April 15, 1977 (OPINION)

Mr. T. N. Tangedahl
Executive Director
Social Service Board of North Dakota
State Capitol
Bismarck, ND 58505

Dear Mr. Tangedahl:

This is in reply to your letter of April 13, 1977, relative to whether First Amendment rights are protected under North Dakota law.

Your inquiry is as follows:

"Whether, under North Dakota, a parent or guardian who does not provide specified medical treatment for a child because of legitimate practicing of religious beliefs may, for that reason alone, be considered a 'negligent' parent or guardian."

Subsection 1 of N.D.C.C. Section 50-21.1-02 defines a "neglected child" as follows:

"'Neglected child' means a deprived child as defined in Chapter 27-20."

Under the provisions of N.D.C.C. Chapter 27-20, "Uniform Juvenile Court Act", there is no provision under which a parent or guardian may be adjudged "negligent". The focus of the law is to foster protection of children and an adjudication that a child is deprived in no manner constitutes a finding of civil or criminal negligence on the part of the parent or guardian. Thus, a parent or guardian who does not provide medical treatment for a child because of "religious beliefs" is not considered "negligent" under the Child Abuse and Neglect Reporting Law (N.D.C.C. Chapter 50-25.1) or under the Uniform Juvenile Court Act (N.D.C.C. Chapter 27-20), although such child may be found to be deprived and necessary medical services provided under order of the Juvenile Court.

In addition, Section 14-09-22 of the North Dakota Century Code provides in pertinent part:

"14-09-22. Neglected Child - Penalty. A parent, guardian, or other custodian of any child who shall cruelly abuse or willfully neglect or refuse to provide subsistence, education, or other necessary care for the health, morals, or well-being of such child . . . shall be guilty of a Class C felony."

This is a common provision under the laws of various states and is a valid exercise of the state's police powers to protect the health and safety of its citizens.

Although there is no North Dakota case law on point striking a balance between the interest of the state and the rights of the

individual under the "free exercise" clause of the First Amendment in this type of a medical treatment case, the courts would certainly follow U.S. Supreme Court rulings which deal with these types of interests and would also look to other states' case law as persuasive authority.

The North Dakota courts would be cognizant of and give full weight to the parent's First Amendment rights both in cases arising under N.D.C.C. 14-09-22 and when considering the propriety of ordering medical services be provided to a child under N.D.C.C. 27-20.

Sincerely,

ALLEN I. OLSON

Attorney General