

**LETTER OPINION**  
**80-8**

December 22, 1980 (OPINION)

Mr. Larry L. Kruckenberg  
Commissioner  
North Dakota Game and Fish Department  
2121 Lovett Avenue  
Bismarck, ND 58505

Dear Mr. Kruckenberg:

This is in response to your letter of December 1, 1980, wherein you state, in part, the following:

It has been the practice of this department to issue state credentials to Fish and Wildlife Service agents to provide them the enforcement authority vested in the office of Game and Fish Commissioner for enforcement of state fish and wildlife laws.

. . .

This question was brought to me by Mr. William Pfeifer, Animal Damage Control Supervisor for the Fish and Wildlife Service here in Bismarck. Two employees under his supervision, as well as other members of the Fish and Wildlife Service, are involved from time to time with enforcement of state game and fish laws, in addition to the enforcement of federal laws, which fall more directly under their purview.

. . .

Our specific question is this: From the State of North Dakota's perspective, what status do these federal employees have when they possess the law enforcement credentials issued by my office and are enforcing laws for the State of North Dakota? Would the State of North Dakota be in a position to back these individuals, including the provision of defense by your office should some criminal or civil action be brought against them for their actions which were made in good faith on behalf of the State in the enforcement of game and fish laws?

In addition to the issue of legal backing there are some differences in the employment of these individuals. While most are general federal employees, several, specifically those supervised by Mr. Pfeifer, are federal employees who actually draw their pay and per diem from the State of North Dakota. These are individuals who work on animal damage control, a program which receives partial state funding through the State Agriculture Department.

We are somewhat confused by your description of this particular problem wherein you state that Fish and Wildlife Service agents have been issued "state credentials" to provide them with the enforcement authority vested in the Commissioner of the Game and Fish Department. In reviewing Title 20.1-02, we are unable to discover any statutes

which authorize the Commissioner to "issue state credentials" to other agents in providing them enforcement authority of those statutes found under this title. However, Section 20.1-02-10 does indicate that the Commissioner may appoint special deputy game wardens.

20.1-02-10. SPECIAL DEPUTY GAME WARDENS - APPOINTMENT, REMOVAL, COMPENSATION. - The commissioner may appoint and remove at pleasure, one or more special deputy game wardens in each county. They shall serve for such time and in such manner as the commissioner may direct. They shall serve without compensation, but shall be entitled to a reward pursuant to section 20.1-02-16.

It will be assumed that the Fish and Wildlife Service agents you speak of in your letter are special deputy game wardens by an appointment from your office pursuant to Section 20.1-02-10. In reviewing this particular section, we note that such special deputy game wardens are to serve without compensation, although they may be entitled to a reward as provided by Section 20.1-02-16. It is noteworthy that game wardens who are "regularly employed" and who receive "a salary from the department" are not eligible to receive such rewards.

The basic question posed by your letter concerns the status of these federal employees upon their appointment as special deputy game wardens. Specifically, you are interested as to whether this office would be involved in actions and proceedings brought against such special deputy game wardens for actions taken within their scope of employment.

Under North Dakota law, this department has the responsibility to appear and defend actions and proceedings brought against certain state employees for alleged negligence within the scope of employment. Section 32-12.1-15 states as follows:

32-12.1-15. STATE AGENCIES AUTHORIZED TO PURCHASE INSURANCE. The state of North Dakota or any state agency, bureau, or department is hereby authorized to insure against liabilities provided by this chapter for its own protection and for the protection of any state employee. If a premium savings will result therefrom, such policies of insurance may be taken out for more than one year, but in no event beyond a period of five years. If the state or any state agency, bureau, or department shall purchase insurance pursuant to this section, the purchaser shall waive its immunity to suit only to the types of insurance coverage purchased and only to the extent of the policy limits of such coverage. The insurance coverage authorized by this chapter may be in addition to insurance coverage which may be purchased by the state or any state agency, bureau, or department, or a political subdivision, under any other provision of law. The attorney general shall appear and defend all actions and proceedings against any state employee for alleged negligence within the scope of employment in any court in this state or of the United States when the agency, bureau, or department employing such employee has not purchased liability insurance coverage pursuant to law. If

both parties to an action are state employees, the attorney general shall determine which state employee he shall represent, and the other employee may employ counsel to represent him. If one of the adverse parties is a state agency, bureau, or department, the attorney general shall appear and defend the agency, bureau, or department in the manner otherwise provided by law.

The key phrase in Section 32-12.1-15 is "state employees." Nowhere in Title 32-12.1 is the phrase "state employees" defined. "Employee" is defined in Section 32-12.1-02; however, this definition excludes from consideration those persons employed by those agencies and departments which constitute the government of the state of North Dakota (see Section 32-12.1-02(3), (5)(b)).

To achieve a definition of "state employees," we refer to Section 1-02-02 which states that words used in the various statutes of the North Dakota Century Code are to be understood in their ordinary sense where a specific definition does not apply. In Webster's New Twentieth Century Dictionary (1962), we find that "employee" is defined as one who is hired by another to work for wages or salary. It appears that the common understanding of "employee" involves an employer-employee agreement where compensation is given in return for work or services provided.

In applying this common and ordinary definition of employee to Section 32-12.1-15, we conclude that a state employee is one hired by the state of North Dakota or one of its agencies or departments to perform services in return for wages or salary. Therefore, we do not believe that special deputy game wardens are state employees as Section 20.1-02-10 is clear in that such special deputy game wardens are to serve without any form of compensation other than possible rewards. Therefore, we do not believe that this office would be required to appear in actions and proceedings brought against such special deputy game wardens pursuant to Section 32-12.1-15.

This is not to suggest, however, that the Attorney General would not appear and defend such special deputy game wardens, or other "cross-deputized" law enforcement agents, where the best interests of this state would be so served. The Attorney General may intervene in such proceedings as Section 32-12.1-15 does not prohibit such action. Indeed, this office has so intervened in past cases involving nonemployed state law enforcement agents. Our conclusion is only that Section 32-12.1-15 requires intervention by the Attorney General in proceedings brought against "state employees" where the agency employing such employees has not purchased liability insurance.

As to your inquiry concerning the basic status of such special deputy game wardens, we can only conclude that, since they are not state employees, they would be considered as agents of the state when acting in this particular capacity. As such, we find no statute which requires this office to appear and defend actions and proceedings brought against agents of this state. However, as previously mentioned, the Attorney General may intervene in such actions and proceedings in furtherance of the best interests of this state.

Your letter does mention that some of these federal employees actually "draw their pay" from the state of North Dakota. You mention that these individuals "work on animal damage control, a program which receives partial state funding through the State Agriculture Department." You do not provide sufficient information concerning the arrangements in the compensation for these employees as far as the state is concerned. If these federal employees are actually state employees for specific purposes, then the coverage provided by the workmen's compensation laws and Section 32-12.1-15 would possibly apply to such employees so long as they are engaged in those specific purposes. However, we do not believe that an individual who receives his compensation from the state Agriculture Department through partial state funding of an animal damage control program may be considered a state employee when he acts as a special deputy game warden upon receiving such an appointment by the Commissioner of the Game and Fish Department.

We hope this information is helpful to you in this matter.

Sincerely,

ALLEN I. OLSON

Attorney General