

Office of the Attorney General
State of North Dakota

Opinion No. 81-136

Date issued: December 23, 1981

Requested by: Governor Allen I. Olson

--QUESTIONS PRESENTED--

Whether Section 9-1-2 of the North Dakota Personnel Policies, relating to appeals and dismissals and other personnel actions, conflicts with any provision of state law.

--ATTORNEY GENERAL'S OPINION--

It is my opinion that Section 9-1-2 of the North Dakota Personnel Policies, relating to appeals and dismissals and other personnel actions, does not conflict with any provision of state law.

--ANALYSIS--

Section 9-1-2 of the North Dakota Personnel Policies provides that permanent classified employees 'may use the statewide appeals mechanism to request a review or reconsideration' of various personnel matters, including dismissals. In Attorney General's Opinion 81-69, we held that there is no statutory basis for an appeal to the State Personnel Board from the dismissal of an employee of a nonmerit system agency. That opinion is hereby affirmed.

The basis for that earlier opinion is the fact that both the content of the statutes involved and the pertinent legislative history indicate that the sole intent of Chapter 54-44.3 of the North Dakota Century Code, in general, and Section 54-44.3-12.2, N.D.C.C., in particular, is to provide uniformity in the areas of job classifications and salary ranges. Section 9-1-2 of the Personnel Policies is consistent with Section 54-44.3-12.2, N.D.C.C., in that it provides for an absolute right of appeal in matters of job classifications and salary ranges. Section 9-1-2, with its use of the permissive 'may', recognizes that there is no absolute right to appeal a dismissal.

Chapter 54-44.3, N.D.C.C., does not give an employee of a nonmerit system agency a substantive, conclusive right to appeal from a dismissal or any other action which is not related to job classification, pay plan, or transfers. Nor can the State Personnel Board grant any such substantive, conclusive right by the adoption of personnel policies.

Although Chapter 9 of the State Personnel Policies does not embody a substantive right of appeal, it does provide a basic mechanism to administratively process employee

complaints arising from various actions, including dismissals. The Governor's Executive Order No. 1981-10 is not in conflict with any provision of state law and is consistent with the intent of Chapter 9 of the State Personnel Policies. This Executive Order reaffirms the Governor's apparent desire to make available to all state employees under the executive agencies headed by the Governor the opportunity to have their grievances on all employee matters, including dismissals, heard by the State Personnel Board. This Executive Order is consistent with the Governor's desire to have personnel grievances decided through a statewide appeal mechanism. There is nothing in the law that prohibits the issuance of such an executive order.

--EFFECT--

This opinion is issued pursuant to Section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the question presented is decided by the courts.

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Attorney General