

Office of the Attorney General
State of North Dakota

Opinion No. 81-137

Date issued: December 23, 1981

Requested by: T. N. Tangedahl
Social Service Board

--QUESTIONS PRESENTED--

I.

Whether county social service boards are required to follow a merit system of personnel administration.

II.

Whether the responsibility for monitoring and enforcing the merit system standards as to the county social service boards staff rests with the Central Personnel Division.

III.

Whether the 'State of North Dakota Personnel Policies' manual is the basis for these standards.

IV.

Whether the county social service boards are required to follow policies describing benefits such as annual leave and sick leave as contained by Chapter 5 of the 'State of North Dakota Personnel Policies' manual.

--ATTORNEY GENERAL'S OPINION--

I.

It is my opinion that the county social service boards in North Dakota are required to follow a merit system of personnel administration.

II.

It is my further opinion that the Central Personnel Division of the State of North Dakota has the responsibility for monitoring and enforcing the merit system standards used by the county social service boards.

III.

It is my further opinion that the 'State of North Dakota Personnel Policies' manual is the basis for these standards.

IV.

It is my further opinion that the county social service boards are required to follow all of the policies describing benefits such as annual leave and sick leave as contained in Chapter 5 of the 'State of North Dakota Personnel Policies' manual.

--ANALYSIS--

I.

In order to receive the federal financial participation necessary for the Medical Assistance program, AFDC program, and other social service programs in North Dakota, federal regulations establish certain criteria which must be met by state and local agencies before the federal financial participation will be made available. The regulations governing the Medical Assistance Program, set forth in 42 CFR § 432.12(c), provide as follows:

Methods of personnel administration must be established and maintained in the Medicaid agency and in agencies administering the program in accordance with:

(1) [Reserved]

(2) 5 CFR 90, Subpart F, Administration of the standards for merit system of personnel administration. (Emphasis Supplied)

A similar provision for the AFDC Program is found in 45 CFR § 235.50(a). It is clear from these regulations that the State Social Service Board and the county social service boards must utilize a merit system of personnel administration in their operation.

II.

The administration of the merit system of personnel administration is vested in the merit system council under the provisions of Chapter 54-42 of the North Dakota Century Code.

Section 54-42-06, N.D.C.C., delineates the agencies which are subject to the merit system, as follows:

54-42-06. AGENCIES SUBJECT TO MERIT SYSTEM. All personnel employed by the department of human services, the regional offices of that department, the job service North Dakota, the North Dakota merit system council, the North Dakota state department of health, and other agencies or political subdivisions as may by federal laws or regulations be required to be subject to the merit system in order to obtain federal grants-in-aid, shall be covered by the complete merit system provided in this chapter. Merit system coverage shall also be provided to personnel employed as purchasing agents or buyers in the purchasing division of the office of management and budget. Such other agencies, departments or divisions, or positions, shall be placed under the complete or limited merit system in the manner and to the extent the legislative assembly shall by law direct.

Although county social service offices are not specifically identified as entities governed by the merit system, they are agencies which must be subject to the complete merit system in order to obtain federal grants-in-aid.

Section 54-42-03, N.D.C.C., states that the merit system council shall establish the general policies and rules which shall be binding upon the agencies effected. These rules and policies include such items as attendance and leave policies. This section also provides that the merit system council shall have the authority to carry out the provisions of the merit system in regard to any agency designated by law to be subject to the complete merit system.

Section 54-42-01, N.D.C.C., provides that the merit system council consist of the State Personnel Board and the Central Personnel Division. The director of the Central Personnel Division is the director of the Merit System Council.

Chapter 54-44.3, N.D.C.C., is the authority for the operation of the Central Personnel System for the State of North Dakota. Section 54-44.3-17, N.D.C.C., states in pertinent part:

. . . the division 1/4 Central Personnel Division 1/2 shall provide those services necessary to comply with merit standards for federal grant-in-aid agencies.

III.

The Central Personnel Division has established its policies and has promulgated them in a document entitled, 'State of North Dakota Personnel Policies.' This manual contains the standards which are to be used by all merit system agencies within the state including the county social service boards.

IV.

Chapter 5 of this manual includes those standards and policies for benefits such as annual leave and sick leave, and are binding upon all merit system agencies including the county social service boards and staff.

--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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