

Date Issued: July 6, 1981 (AGO 81-69)

Requested by: Dale Moug, Director, Department of Accounts and Purchases

- QUESTION PRESENTED -

Whether it is appropriate for the State Personnel Board to hear an appeal from an employee of the Highway Department who has been dismissed.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that there is no statutory basis for an appeal to the State Personnel Board from the dismissal of an employee of the Highway Department.

- ANALYSIS -

Pursuant to section 24-02-03(4) of the North Dakota Century Code, employees of the Highway Department are subject to dismissal in the discretion of the commissioner. The Highway Department is not a merit system agency, hence dismissals of an employee are not covered by chapter 54-42, N.D.C.C.

The one instrument that on its face appears to apply to the dismissal of a highway department employee is Chapter 9 of the North Dakota Personnel Policies. Section 9-1-2 of the North Dakota Personnel Policies provides for an appeal to the State Personnel Board from the dismissal of a classified employee. The apparent basis for this appeals procedure is a directive in section 54-44.3-12.2, N.D.C.C., that the statewide personnel division develop and implement a "statewide appeal mechanism". That section was created in 1979 by a conference committee amendment to the bill which created section 54-44.3-12.1, N.D.C.C., relating to the revision of classification and compensation plans. The legislative history does not reveal whether the appeal mechanism was intended to be available for purposes other than classification and compensation plans.

Chapter 54-44.3, N.D.C.C., does not mention the dismissal of state employees. Furthermore, section 54-44.3-07, N.D.C.C., providing for the review by the Board of any matters other than pay raises or job classifications. Thus, it appears that the statewide appeals procedure contemplated by section 54-44.3-12.1, N.D.C.C., was intended to apply only to disputes over compensation and classification plans and has no application to terminations or dismissals in nonmerit system agencies. As such, Chapter 9 of the North Dakota Personnel Policies exceeds the statutory authority of the State Personnel Board and the Central Personnel Division insofar as it provides a right to appeal from a dismissal to employees of nonmerit system agencies. Accordingly, the State Personnel Board cannot hear an appeal from a dismissal in the Highway Department.

- 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, or the applicable provisions of law are amended or repealed.

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