

Date Issued: June 22, 1984 (AGO 84-28)

Requested by: Brian C. McClure, Director
Central Personnel Division

- QUESTION PRESENTED -

Whether the State Personnel Board has the authority pursuant to Section 54-44.3-20 of the North Dakota Century Code and Section 54-44.3-21, N.D.C.C., to exempt from classification the nonteaching staffs at Bismarck Junior College, University of North Dakota-Williston Center, and Lake Region Community College for a period of one year until July 1, 1985.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that the State Personnel Board does not have the authority pursuant to Section 54-44.3-20, N.D.C.C., and Section 54-44.3-32, N.D.C.C., to exempt from classification the nonteaching staffs at Bismarck Junior College, University of North Dakota-Williston Center, and Lake Region Community College, for a period of one year until July 1, 1985.

- ANALYSIS -

Chapter 54-44.3, N.D.C.C., establishes the Central Personnel System. Sections 54-44.3-07 and 54-44.3-12, N.D.C.C., set forth the duties of the State Personnel Board and the Director of the Central Personnel Division respectively. Both sections provide for establishing the necessary rules for carrying out duties imposed by law. Section 54-44.2-12, N.D.C.C., specifically provides for the Director, subject to the Board, to make rules for establishing classification plans. The Board has broad authority to make rules for carrying out the classification system. Hammond v. North Dakota State Personnel Board, 322 N.W.2d. 244, 249 (N.D. 1983).

Section 54-44.3-20, N.D.C.C., provides:

54-44.3-20. CATEGORIES OF POSITIONS IN THE STATE SERVICE. All positions in the state service are included in the classified service except:

1. Each official elected by popular vote and each person appointed to fill vacancies in an elective office, one principal assistant, and one private secretary.
2. Members of boards and commissions required by law.
3. Administrative heads of departments required by law.
4. Officers and employees of legislative branch of government.

5. Members of the judicial branch of government of the state of North Dakota and their employees and jurors.
6. Persons temporarily employed in a professional or scientific capacity as consultants or to conduct a temporary and special inquiry, investigation, or examination for the legislative branch of government or a department of the state government.
7. Officers and members of the teaching staff of universities and other institutions of higher education.
8. Positions deemed to be inappropriate to the classified service due to the special nature of the position as determined by the division and approved by the board.
9. The classified employees at the institutions of higher education under the control of the state board of higher education, until July 1, 1976.
10. Members and employees of occupational and professional boards.
11. Officers and employees of the North Dakota mill and elevator association. (Emphasis supplied).

Subsection 8 of the above-quoted statute authorizes the Director and the Board to exempt from classified service positions which are not appropriate for classification because of their "special nature."

Effective July 1, 1984, the nonteaching staffs at Bismarck Junior College, University of North Dakota-Williston Center, and Lake Region Community College, are state employees. Therefore, unless there is an exception provided in Section 54-44.3-20, N.D.C.C., the nonteaching staff at these three state institutions will be employed in classified service positions. Thus, the issue is whether these nonteaching staff positions are of a such a "special nature" that it would be inappropriate to include them in the classified service until July 1, 1985.

It is my opinion that the positions of the nonteaching staff at Bismarck Junior College, University of North Dakota-Williston Center, and Lake Region Community College, are of a special nature only to the extent that the assimilation of the nonteaching staff into the state classified service creates an administrative problem for the Central Personnel Division. These classified service positions must be under a class title which has been approved by the Director of Central Personnel in accordance with Section 54-44.3-21, N.D.C.C.

Therefore, it is my opinion that the nonteaching staff at the above-named institutions must be included in the classified service on July 1, 1984. Necessarily a reasonable time can be taken to properly classify these positions so long as these classifications are made effective as of July 1, 1984.

- 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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