

LETTER OPINION
93-L-298

October 20, 1993

Honorable Rosemarie Myrdal
Lieutenant Governor
State Capitol
600 East Boulevard Avenue
Bismarck, ND 58505

Dear Lieutenant Governor Myrdal:

Thank you for your September 30, 1993, letter requesting my opinion on the corporate status of Families First Region IV and Families First Region III chartered pursuant to North Dakota Century Code (N.D.C.C.) ch. 54-56.

N.D.C.C. ? 54-56-04 provides as follows:

54-56-04. Charter public corporations. The children's services coordinating committee may charter public corporations to implement programs for the classes of children and programs described in section 54-56-03. The committee shall prescribe conditions for the creation, continuance, and duration of those corporations. Each corporation must possess all powers and perform all the duties usual to corporations for public purposes or conferred upon it by law. Under its name, it may sue and be sued, enter into contracts, receive and expend moneys, employ personnel, and convey property that comes into its possession by will or otherwise. The employees of those corporations are not liable for acts performed within the scope of their employment, as defined in section 26.1-21-10.1. After approval by the children's services coordinating committee, a corporate charter becomes effective upon filing with the secretary of state.

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A question has arisen as to whether the entities chartered under this statute are something other than public corporations as described in the statute. As noted in the November 21, 1988, letter opinion from former Attorney General Spaeth to then Lieutenant Governor Omdahl, North Dakota corporation law provides generally only for business corporations, nonprofit corporations, and professional corporations. There are specific provisions for particular public corporations such as a public corporation for the operation of multi-school district special education programs, N.D.C.C. ? 15-59.2-01.1, and a public corporation provided in N.D.C.C. ? 54-56-04 to implement children's services programs.

The entities you describe in your letter were chartered pursuant to N.D.C.C. ? 54-56-04 and not under some other provision of North Dakota corporation law. These entities cannot be nonprofit corporations since they were not formed pursuant to N.D.C.C. ch. 10-24. These particular entities owe their corporate existence to their creation under N.D.C.C. ? 54-56-04 and, consequently, are public corporations within the meaning of that statute.

The fact that the employees of these corporate entities are no longer statutorily authorized to be members of the Public Employees Retirement System because of the 1991 amendment to N.D.C.C. ? 54-56-04 has no bearing on the corporate status of these entities. Membership in the Public Employees Retirement System is not inherent in the successful establishment of a public corporation. See November 21, 1988, letter from Attorney General Spaeth to Lieutenant Governor Omdahl.

In addition, the fact that the Children's Services Coordinating Committee does not control the direct day-to-day activities and affairs of the public corporations in no way changes their status as public corporations. See N.D.C.C. ? 54-56-04. The statute establishes that the role of the Children's Services Coordinating Committee is to charter the public

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corporations, which, in turn, then "implement programs for the classes of children and programs described in section 54-56-03." Id. N.D.C.C. ? 54-56-03 provides that the Committee has planning, coordinating, and oversight functions. Involvement in day-to-day administration is not contemplated by N.D.C.C. ch. 54-56 and is not relevant in determining the corporate status of entities chartered under that chapter.

Finally, as you note in your letter, the statute specifically provides that the Children's Services Coordinating Committee prescribes conditions for the creation, continuance, and duration of the public corporations formed thereunder. Therefore, the Committee rather than an individual corporation controls the continuance and duration of the public corporate entity.

In summary, it is my opinion that Families First Region IV and Families First Region III which were chartered pursuant to N.D.C.C. ? 54-56-04 are public corporations within the meaning of that statute and have no other corporate status.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

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