

LETTER OPINION
94-L-311

November 10, 1994

Mr. Doug Mattson
Ward County State's Attorney
Ward County Courthouse
Minot, ND 58701

Dear Mr. Mattson:

Thank you for your letter inquiring whether your office may obtain and furnish criminal history record information pertaining to applicants for a license to provide foster care for children to the Ward County Social Service Board pursuant to your duty to advise county officers. You propose to give the information to the county social service board because the board does not have funds to cover the \$20 fee charged a noncriminal justice agency for criminal history record checks.

You advise that Ward County Social Service Board staff process applications for licenses to furnish foster care for children for the Department of Human Services (Department). N.D.C.C. ?? 50-01-09(2); 50-11-00.1(4), (6); 50-11-01; N.D. Admin. Code ch. 75-03-14. You advise that criminal history record checks of applicants are not required, but that the social service staff wants to conduct such checks as a precautionary measure.

The Department is impliedly authorized to obtain criminal history record information checks of applicants for a license to provide foster care for children. N.D.C.C. ? 50-11-02.1 provides that conviction of an offense does not disqualify a person from licensure to furnish foster care for children "unless the department determines that the offense has a direct bearing upon a person's ability to serve the public as the operator of a [family foster home for children, group home or residential child care facility for children] or that, following conviction of any offense, the person is not sufficiently rehabilitated" A license may be revoked on

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the same basis. N.D.C.C. ? 50-11-07(4). Authority to obtain a criminal record check is further implied under N.D.C.C. ? 50-11-02 providing for the granting of a license "to reputable and responsible persons" if the foster care facility is "likely to be conducted for the public good in accordance with sound social policy and with due regard to the health, morality, and well-being of all persons cared for therein." N.D.C.C. ? 50-11-02(3).

The Bureau of Criminal Investigation (BCI) is authorized to disclose criminal history record information to a criminal justice agency and a court. N.D.C.C. ? 12-60-16.5. A "'[c]riminal justice agency' means any government law enforcement agency or entity authorized by law to provide information regarding, or to exercise the powers of, arrest, detention, prosecution, correctional supervision, rehabilitation, or release of persons suspected in, charged with, or convicted of a crime." N.D.C.C. ? 12-60-16.1. A state's attorney is the public prosecutor for the state, N.D.C.C. ? 11-16-01(1), and a law enforcement officer. N.D.C.C. ?? 12-60-07(2), 12.1-01-04(17),(27). Thus, the state's attorney's office is encompassed by the definition of a criminal justice agency. A county social service board is not within the definition and therefore is a "[n]oncriminal justice agency." N.D.C.C. ? 12-60-16.1(6). The BCI is required to charge a \$20 fee for a record check for a noncriminal justice agency. N.D.C.C. ? 12-60-16.9; N.D. Admin. Code ? 10-13-05-03.

N.D.C.C. ? 12-60-16.6 specifies that only the BCI may disclose criminal history record information to a noncriminal justice agency. Therefore, your office is not authorized to disseminate criminal history record information to the county social service board.

Existing statutes provide a revenue source for a record check regarding applications for licensure of child care facilities other than foster homes, group

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homes, and residential child care facilities. N.D.C.C. ? 50-11.1-03(3) requires a fee with an application for licensure of certain child care facilities. N.D.C.C. ? 50-11.1-03(5) provides that the license application fee "must be paid to the county social service board and must be used to defray the cost . . . of investigating, inspecting and evaluating the applications" Similar legislation could be proposed in connection with licensing of a family foster home for children, a group home, or a residential child care facility under N.D.C.C. ch. 50-11. Another alternative would be to seek legislation to exempt a county social service board from paying the fee in connection with licensing activities.

N.D.C.C. ? 50-01-09 allows a county social service board to "charge and collect fees for services provided by its staff in accordance with policies and fee schedules adopted by the department of human services." Thus, an administrative rule could be adopted providing for collection of a fee for a criminal record check in connection with processing an application for a license or renewal of a license under N.D.C.C. ch. 50-11. See N.D. Admin. Code chs. 75-03-14, 75-03-16. A similar rule has recently been proposed in connection with an amendment to N.D. Admin. Code ch. 75-03-21 regarding licensing of family foster homes for adults. A proposed amendment to N.D. Admin. Code ? 75-03-21-02(3) provides for a \$25 fee to accompany the application to operate a family foster home for adults. "The fee will be retained by the [county social service board] and used for training and education of the county agency staff who administer the license program." Id.

In summary, a county social service board is required to pay a \$20 fee for a criminal history record check by the BCI because it is a noncriminal justice agency.

N.D.C.C. ? 12-60-16.9. Only the BCI may disseminate criminal history record information to a noncriminal justice agency. N.D.C.C. ? 12-60-16.6. Although an exemption from the fee for a county social service board would require legislation, alternative funding to cover the fee could be provided by adoption of administrative rules requiring a licensure application fee.

Sincerely,

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