

LETTER OPINION
94-L-139

April 29, 1994

Mr. Henry C. Wessman
Executive Director
North Dakota Department
of Human Services
State Capitol
Bismarck, ND 58505-0250

Dear Mr. Wessman:

Thank you for your March 28, 1994, letter regarding the application of the North Dakota veteran's preference laws to applications received from employees of county social service offices who apply for positions within the Department when the Department by policy recruits internally. You indicate that the Department has defined "internal recruitment" as "the process of acquiring employees from within the Department, including county social service boards to fill new or vacant positions." You also state that counties have agreed to accord internal status to employees of other county social service boards as well as employees of the Department.

North Dakota Century Code (N.D.C.C.) ? 37-19.1-02(1) provides that "[v]eterans who are North Dakota residents are entitled to preference, over all other applicants, in appointment or employment by governmental agencies. . . ." A "governmental agency" is defined as "all political subdivisions and any state agency, board, bureau, commission, department, officer, and any state institution or enterprise authorized to employ persons either temporarily or permanently." N.D.C.C. ? 37-19.1-01(1).

In 1985, in the case of In the Matter of Veteran's Preference Grievance of James E. Meyers; Civil No. 6022 (January 15, 1985), the Stutsman County District Court, the Honorable Gordon O. Hoberg presiding, concluded that veteran's preference did not apply to promotions within an agency but rather only to initial

hiring actions. This decision was largely based upon the legislative history surrounding the 1973 enactment of N.D.C.C. ch. 37-19.1. See Committee Minutes for 1973 Senate Bill No. 2113.

County social service boards are essentially arms of the county. See Fuller v. Finger, 289 N.W. 805 (N.D. 1940); 1981 N.D. Op. Att'y Gen. 323; letter from Attorney General Nicholas J. Spaeth to Brian McClure (January 15, 1992). Although the Department directs and supervises many of the activities of county social service boards, each board remains a separate and independent appointing or employing authority. Thus, the district court's decision in Meyers is not directly applicable. In my opinion, the Meyers decision is limited to promotions or transfers within a single governmental agency. Opinions of this office have clearly distinguished between employees of counties and employees of the State of North Dakota. Letter from Attorney General Nicholas J. Spaeth to Brian McClure (October 4, 1991) and letter from Attorney General Nicholas J. Spaeth to Brian McClure (January 15, 1992).

The question remains however, whether an agency may treat employees of another agency as its own employees for purposes of appointment or employment based upon the manner of advertising and opening the vacancy such that veteran's preference does not apply. In my opinion an agency may not.

N.D.C.C. ? 37-19.1-02 provides veterans a preference in appointment or employment by a governmental agency.

This provision applies to the initial hiring action by an agency, and no exception for the manner in which the vacancy is opened and advertised is provided. Regardless of how a vacancy is opened or advertised, the Department's appointment and employment of an individual formerly employed by a county social service board constitutes an initial hiring action subject to veteran's preference. The same is true for employment by a county social service board of a person formerly employed by the Department or by another county social service board.

Sincerely,

Mr. Henry C. Wessman
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ATTORNEY GENERAL

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