

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 95-F-04

Date issued: March 20, 1995

Requested by: Wayne P. Jones, Ransom County State's
Attorney

- QUESTION PRESENTED -

Whether a county may contract with a private company for the private company to provide the services of a director of public health.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that a county may not contract with a private company for the private company to provide the services of a director of public health.

- ANALYSIS -

Counties have only those powers expressly conferred upon them by the Legislature, or those necessarily implied from the powers expressly granted. Murphy v. Swanson, 198 N.W. 116, 119 (N.D. 1924).

There are no North Dakota statutes that refer to a director of public health or a public health director. The majority of statutes addressing a county's authority or duties regarding health care are found at N.D.C.C. ch. 23-03, which addresses county boards of health, and at chapter 23-05, which addresses local boards of health in general. The Board of County Commissioners is required to appoint a county board of health.

N.D.C.C. § 23-03-01. The county board of health is required to appoint a county health officer who must be a licensed physician. N.D.C.C. § 23-03-02.1. Inherent in the qualifications for licensure is that a physician must be a natural person, not a corporation. N.D.C.C. § 43-17-18. "The county health officer shall receive such compensation as the board of health may determine." N.D.C.C. § 23-03-05.

The county health officer is required to exercise numerous duties outlined primarily in N.D.C.C. §§ 23-03-07 and 23-03-08. These duties include exercising the powers of the county board of health under its supervision and the supervision of the State Department of Health and Consolidated Laboratories. N.D.C.C. § 23-03-07(1). The county board of health may also "employ persons as may be necessary to carry

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into effect the regulations established by it and the provisions of this title [23]." N.D.C.C. § 23-05-01(1). Although the county health officer is responsible to the county board of health, a person or persons may be employed to manage daily operations for the county health officer.

Some other statutes relevant to a county's authority or duties over health care include the following: N.D.C.C. § 23-14-01.1 (a county may contract with a city within the county which has a health department approved by the State Department of Health and Consolidated Laboratories to provide health services throughout the county and in other cities within the county); N.D.C.C. § 15-47-22 (a board of county commissioners may employ licensed physicians or graduate nurses to examine pupils in the schools in the county); N.D.C.C. § 11-11-56 (a county may appropriate funds to an areawide comprehensive health planning organization for comprehensive health planning); N.D.C.C. § 15-52-07 (counties shall make the fullest possible use of the facilities and services of the North Dakota State Medical Center at the University of North Dakota in Grand Forks and shall pay therefor the established fees and charges, and may contribute to the North Dakota State Medical Center specific fees or monthly payments for specific facilities and services furnished); and N.D.C.C. §§ 11-09-14(10) and 11-09-46 (under the county managership form of government, the county manager shall be responsible to the board of county commissioners for the administration of public health work and the operation of the county hospitals).

None of the statutes relevant to the provision of public health care by a county authorize the county, either expressly, or by necessary implication, to contract with a private company for the private company to provide the services of a director of public health or a county health officer. Therefore, it is my opinion that a county may not contract with a private company for the private company to provide the services of a director of public health or a county health officer.

- EFFECT -

This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.

Heidi Heitkamp
ATTORNEY GENERAL

Assisted by: Leah Ann Schneider, Assistant Attorney General

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