

LETTER OPINION
95-L-211

September 7, 1995

The Honorable Donna Nalewaja
State Senator
1121 11th St N
Fargo, ND 58102

Dear Senator Nalewaja:

Thank you for your August 24, 1995, letter asking whether 1995 Senate Bill 2092 prohibits a person who has been convicted of violating the Department of Human Services' rules for early childhood services from continuing to provide early childhood services in the person's home.

North Dakota Century Code (N.D.C.C.) § 50-11.1-03(1) does not require a license for a family child care home where services are being provided to fewer than four children up to age twenty-four months and fewer than a total of six children at any one time. However, under 1995 Senate Bill 2092,

[a] person who has been convicted of a crime against a child or is a sexual offender, as defined in section 12.1-32-15, or who has had an application for licensure or registration to provide early childhood services denied because of a finding of probable cause against that person for child abuse or neglect under chapter 50-25.1 or who has had a license or certificate of registration revoked upon a finding of probable cause against that person for child abuse or neglect under chapter 50-25.1, and who continues to provide early childhood services to any child not a member of that person's household, is guilty of a class B misdemeanor.

N.D.C.C. § 50-11.1-13.1; 1995 N.D. Sess. Laws ch. 466, § 1. Thus, even if a license to provide early childhood services is not required, providing those services may be a criminal violation under the circumstances described in the statute.

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Your letter asks whether N.D.C.C. § 50-11.1-13.1 applies to a person whose license to provide early childhood services was revoked and who was convicted of violating the Department of Human Services' rules for these services. A person who has been convicted of this offense has not been convicted of a "crime against a child" and is not a "sexual offender" as those terms are defined in N.D.C.C. § 12.1-32-15. Therefore, N.D.C.C. § 50-11.1-13.1 does not apply to the situation you describe unless the person's "license or certificate of registration to provide early childhood services [was] revoked upon a finding of probable cause against that person for child abuse or neglect under chapter 50-25.1."

In response to your letter, a member of my staff contacted the Department of Human Services and learned that the license of the person you describe was revoked for a violation of North Dakota Administrative Code § 75-03-08-06(2)(f)(4) (placing children in a dangerous environment and leaving children without supervision). A finding of probable cause of abuse or neglect under N.D.C.C. chapter 50-25.1 was made several months later, but was not the basis for the license revocation. The letter of an unambiguous statute may not be disregarded under the pretext of pursuing its spirit. N.D.C.C. § 1-02-05. Therefore, under the plain language of the statute, I am forced to conclude that N.D.C.C. § 50-11.1-13.1 does not prohibit the person you describe from providing early childhood services without a license under N.D.C.C. § 50-11.1-03(1).

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

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