

**LETTER OPINION**  
**95-L-281**

November 30, 1995

Honorable Robert W. Peterson  
State Auditor  
600 East Boulevard Avenue  
Bismarck, ND 58505

Dear Mr. Peterson:

Thank you for your letter asking about your authority to audit the eight regional planning councils created under N.D.C.C. ch. 54-40.1 at the request of the Legislative Council's Legislative Audit and Fiscal Review Committee (LAFRC). As you note, regional planning councils are not contained in the specific list of political subdivisions appearing in N.D.C.C. § 54-10-14 for which periodic biennial audits are required. Because the list of auditable political subdivisions in N.D.C.C. § 54-10-14 is specific and limited, and does not include regional planning councils, if you have authority to audit those councils, it must be found elsewhere in N.D.C.C. ch. 54-10. You ask whether that authority is included in N.D.C.C. §§ 54-10-15, 54-10-19, or anywhere else in N.D.C.C. ch. 54-10.

N.D.C.C. § 54-10-15 requires the audit "of any political subdivision when" ordered by the Governor, requested by the governing board of the political subdivision, or, for those political subdivisions listed in N.D.C.C. § 54-10-14, upon the petition of at least 35% of the qualified electors of that political subdivision that voted for the office of Governor at the preceding general election. (Emphasis added.) Therefore, if a regional planning council is a political subdivision under N.D.C.C. ch. 54-10, N.D.C.C. § 54-10-15 requires that it be audited if the conditions of that section are met. The list of political subdivisions in N.D.C.C. § 54-10-14 does not limit the political subdivisions that may be audited under N.D.C.C. § 54-10-15, except with respect to the petition process.

In addition to discussing supervision of books and enforcing uniform methods of keeping financial accounts, N.D.C.C. § 54-10-19 provides for an audit under limited circumstances. That audit authority is only over "private institutions with which the state has any dealings so far only as the same relate to such dealings." Therefore, the audit authority in N.D.C.C. § 54-10-19 would only allow a limited audit of a private institution to the extent of its dealings with the state.

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N.D.C.C. § 54-10-13 provides that audits of political subdivisions are to be performed under N.D.C.C. §§ 54-10-14, 54-10-15, and "at the discretion of the state auditor for alleged improprieties." Thus, the State Auditor has discretion to perform an audit of a political subdivision if there are allegations of improprieties in any financial matter of that political subdivision.

Additionally, N.D.C.C. § 54-10-16 requires the State Auditor to audit any political subdivision if a political subdivision officer leaves the employment of that political subdivision and the governing body of the political subdivision makes a written request to the State Auditor for an audit and states in that written request that there is reason to believe that there are irregularities in handling funds or embezzlement involved.

N.D.C.C. ch. 54-10 does not provide authority for the State Auditor to do periodic audits of political subdivisions other than those contained in N.D.C.C. § 54-10-14. It is therefore my opinion that N.D.C.C. ch. 54-10 does not authorize you to do periodic audits of all regional planning councils created under N.D.C.C. ch. 54-40.1 as requested of you by the LAFRC.

Whether an entity is a political subdivision depends on the purpose for which the determination is sought to be made. Although the term "political subdivision" is defined at least thirteen times for various purposes in the North Dakota Century Code, no general definition for audit purposes under N.D.C.C. ch. 54-10 is contained in that chapter other than the specific list in N.D.C.C. § 54-10-14.

Regional planning councils created under N.D.C.C. ch. 54-40.1 are to further a statewide policy for planning activities for state and local governmental units. N.D.C.C. § 54-40.1-01 provides, in part:

It is the purpose of this chapter to establish a consistent, comprehensive statewide policy for planning, economic development, program operations, coordination, and related cooperative activities of state and local governmental units and to enhance the ability of and opportunity for local governmental units to resolve issues and problems transcending their individual boundaries. In furtherance of this purpose, the legislative assembly finds that the governor is required to assure orderly and harmonious coordination of state and local plans and programs with federal, state, and regional planning and programming.

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Membership on regional planning councils is comprised mostly of elected county and city officials (N.D.C.C. § 54-40.1-03(1)). Regional planning councils are to "participate with other public agencies" and private organizations for planning in the region (N.D.C.C. § 54-40.1-04(3) (emphasis added)). The regional planning councils shall also prepare an annual budget, receive and expend federal, state, and local funds, and hire an executive director to supervise the staff of the regional planning council. N.D.C.C. § 54-40.1-04(7), (8), and (9). These duties and functions, combined with others in N.D.C.C. ch. 54-40.1, make it appear regional planning councils are performing a public function and are organized pursuant to statutory authority.

Although numerous political subdivisions created by North Dakota law have taxing authority, the authority to levy a tax is not decisive in determining whether a statutorily created entity is a political subdivision. 61 N.D. Op. Att'y Gen. 221, 223. Regional planning councils do not have taxing authority, but it is lawful for other political subdivisions to grant tax funds to regional planning councils. Letter from Attorney General Allen I. Olson to Russell Staiger (July 28, 1978).

Other political subdivisions without tax levy authority have been determined to be political subdivisions for purposes of social security. Multidistrict special education units and multi-district vocational educational centers created pursuant to N.D.C.C. chs. 15-59.2 and 15-20.2 are political subdivisions for at least social security purposes. See Letter from Attorney General Allen I. Olson to Superintendent of Public Instruction Howard J. Snortland (January 24, 1980).

It is interesting to note that the multi-district special education units and the multi-district vocational education centers discussed in the above-noted opinion to Superintendent of Public Instruction Snortland are also listed as political subdivisions subject to periodic audit pursuant to N.D.C.C. § 54-10-14(11) and (12).

Although some North Dakota entities have been determined by this office not to be political subdivisions (the courts of North Dakota by 1989 N.D. Op. Att'y Gen. 45, Indian tribes by letter from Assistant Attorney General Terry L. Adkins to Motor Vehicle Department Deputy Registrar Keith Kiser (March 7, 1986), and County Historical Societies organized as nonprofit corporations by letter from Attorney General Nicholas J. Spaeth to State's Attorney James T. Odegard (July 12, 1990)), the statutory basis for the organization of regional planning councils, their association with other political

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subdivisions, their expenditure of taxpayer funds, and the public purposes they serve lead me to conclude that regional planning councils are political subdivisions for purposes of audits if authorized by N.D.C.C. ch. 54-10.

Therefore, for the purposes of N.D.C.C. ch. 54-10, it is my opinion that regional planning councils created under N.D.C.C. ch. 54-40.1 are political subdivisions. It is my further opinion that the State Auditor may conduct an audit of regional planning councils only under the authority of N.D.C.C. §§ 54-10-13, 54-10-15, or 54-10-16 if the conditions precedent required by any of those sections are met.

Sincerely,

Heidi Heitkamp  
ATTORNEY GENERAL

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