

LETTER OPINION
96-L-19

February 16, 1996

Mr. John T. Goff
Cass County State's Attorney
P.O. Box 2806
Fargo, ND 58108-2806

Dear Mr. Goff:

Thank you for your February 7, 1996, letter asking about my opinion to you concerning county participation in state-regulated merit system personnel administration. Letter from Attorney General Heidi Heitkamp to State's Attorney John T. Goff (November 22, 1995).

With your letter you forwarded the December 21, 1995, letter from then Cass County Commission Chairman Bernie Ness, and its attached July 11, 1995, letter from U.S. Senator Byron L. Dorgan.

Mr. Ness's letter states that the earlier opinions from this office "were based on federal regulations which have since been abolished." However, the federal regulations cited in the prior opinions of this office are still in place in the Code of Federal Regulations as indicated by the enclosed copy of 5 C.F.R. Subpart F - Standards for a Merit System of Personnel Administration. The C.F.R. sections attached are from the January 1, 1995, edition and, as noted in handwriting at the top of the page, the List of Sections Affected for the year 1995 discloses that there have been no changes to Part 900 during that year.

Please note that nothing in Senator Dorgan's letter indicates the abolition of these federal regulations. That letter only states that something called a Federal Personnel Manual System (FPMS) mentioned in 5 C.F.R. § 900.606 has been abolished. This section deals with that system and other relevant "publications" of the Office of Personnel Management. Furthermore, Senator Dorgan's letter specifically states:

Meanwhile, state and local governments are left with the "Standards for a merit system of personnel administration" laid out in 5 CFR 900.603. . . .

The federal regulations provide standards for states to follow under the relevant circumstances where a merit system of personnel

Mr. John T. Goff
February 16, 1996
Page 2

administration must be used. The opinions from this office describe those circumstances. The duties and responsibilities of North Dakota counties with respect to adherence to the state merit system are based on state law as interpreted in the opinions noted in my prior opinion to you.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

rel/pg
Enclosure
cc: Marshall Flagg, Department of Human Services