

OPINION
56-73

January 13, 1956 (OPINION)

LABOR UNIONS

RE: "Agency Shop"

We have your letter of January 12, 1956, in which you state that the following clause has been proposed to be included in a labor agreement now in the process of negotiation:

It is agreed and understood that employees who for various reasons object to joining the union shall pay to the financial secretary of the union an amount equal to dues collected from regular members for the service and benefits he receives under the terms of this agreement."

The opinion of this office is requested as to whether or not this clause in a union contract is in violation of the provisions of section 34-0114 of the 1953 Supplement to the North Dakota Revised Code of 1943. This statute reads as follows:

RIGHT TO WORK NOT TO BE ABRIDGED BY MEMBERSHIP OR NONMEMBERSHIP IN LABOR UNION. No person shall be deprived of life, liberty or property without due process of law. The right of persons to work shall not be denied or abridged on account of membership or nonmembership in any labor union or labor organization, and all contracts in negation or abrogation of such rights are hereby declared to be invalid, void and unenforceable."

Under the proposed clause as set out above employees are not obliged to become union members. However, this clause provides that if they do not choose to join the union they shall pay to the union an amount equal to dues collected from regular members for the services and benefits received under the terms of the agreement.

We believe that this clause amounts to what is generally recognized as an "agency shop agreement". In response to a question as to the legality of an "agency shop agreement" this office in a letter dated July 8, 1952, gave its opinion as follows:

We do not think that an agency shop agreement is in violation of the above law. In the first place, the right to work under this agreement is not dependent upon membership in a Union, but is rather a payment of a fee as compensation for representation by the Union. Secondly, the employee enters into the arrangement of his own free will and without actual membership in the Union. His right to work is not abridged on account of membership or nonmembership in the Union, but he is placed on an equal footing with the Union members in consideration of the payment of the fee."

We reiterate this statement in regard to the proposed clause as set

out herein and state that we do not believe there is anything illegal in such an agreement between the employer and the union. However, we do not think that the fact that such an agreement exists between the employer and the union can be used as the reason or basis for discharging or refusing to hire an employee who refuses to pay a fee to a union for the services and benefits he receives under the terms of the union's contract with his employer.

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Attorney General