

ELEANOR M. CAREY
Deputy Attorney General
576-6329

PAUL F. STRAIN
Deputy Attorney General

L. JAMES M. SWEENEY
Chief Civil Division
Chief General Counsel

A. LARRY AISENSTARK
Chief Counsel
Opinions and Advice
576-6316

JAMES G. KLAIR
Chief Counsel
Administration and
Counsel to the Courts
576-6320

DIANA G. MOTZ
Chief Counsel
Litigation
576-6338

DOROTHY A. BEATTY
Principal Counsel
Trial Litigation
576-6337

DEBORAH K. CHASANOW, Chief
Criminal Appeals and
Correctional Litigation
576-6422



OFFICES OF THE ATTORNEY GENERAL

Munsey Building
Calvert and Fayette Streets
Baltimore, Maryland 21202

STEPHEN H. SACHS
Attorney General

(301) 576-6300

TTY for Deaf
Balto. Area 383-7555
D.C. Metro 565-0451

JAMES J. MINGLE, Chief
Educational Affairs Division
576-6450

GARY P. JORDAN, Chief
Criminal Investigations
576-6389

STEPHEN M. SCHENNING, Chief
Medicaid Fraud Control Unit
576-6521

STEVEN J. COLE
Director, Consumer and Investor Affairs
Chief, Consumer Protection Division
576-6550

K. HOUSTON MATNEY, Commission
Securities Division
576-6360

CHARLES O. MONK, II, Chief
Antitrust Division
576-6470

ROBERT A. ZARNOCH
Chief Counsel
Legislation
104 Legislative Services Bldg.
Annapolis, Maryland 21401
841-5889
858-3889 D.C. Metro

November 23, 1983

The Honorable Ruth Massinga
Secretary of Human Resources
1100 North Eutaw Street
Baltimore, Maryland 21201

Dear Secretary Massinga:

You have requested our opinion on two questions involving the evaluation of local directors of social services:

(1) Does the Department of Human Resources have authority to prescribe criteria and procedures to be used by local boards of social services in their annual evaluation of local directors of social services?

(2) In performing such an evaluation, may the local board examine and rely upon internal agency documents - such as "corrective action plans", reports, and correspondence - that relate to the performance of a local department of social services and its director?

In a memorandum dated November 9, 1983, your counsel addressed these questions and concluded as follows: (1) The Department of Human Resources has the authority to prescribe

OPINION OF THE ATTORNEY GENERAL

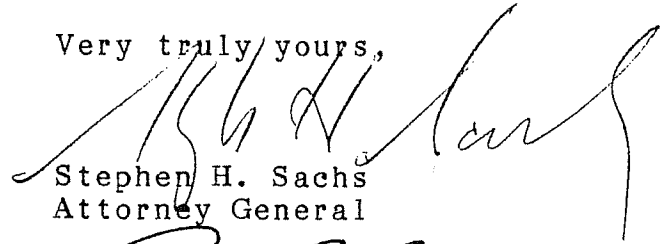
Cite as: Opinion No. 83-044 (November 23, 1983) (unpublished)

HUMAN RESOURCES - SOCIAL SERVICES -
PERSONNEL - CONFIDENTIAL RECORDS -
LOCAL BOARDS AND DIRECTORS OF
SOCIAL SERVICES - DHR MAY PRESCRIBE
PROCEDURES TO BE USED BY BOARDS IN
EVALUATING DIRECTORS - AGENCY
DOCUMENTS MAY BE EXAMINED BY BOARDS
FOR EVALUATION PURPOSES.

evaluation criteria and procedures for the evaluation of local directors by local boards, so long as the criteria and procedures are not inconsistent with those adopted by the Department of Personnel for State employees. (2) For purposes of performing such evaluations, local boards have the right to examine and rely upon internal agency documents that relate to the performance of local departments and directors.* Memorandum from Joel J. Rabin, Counsel to the Department of Human Resources, to Ruth Massinga, Secretary of Human Resources (November 9, 1983).

We have reviewed your counsel's advice to you and concur in the conclusions expressed in his memorandum of November 9, 1983, a copy of which is attached to this Opinion.

Very truly yours,



Stephen H. Sachs
Attorney General



Avery Aisenstark
Chief Counsel
Opinions and Advice

* Of course, the information contained in the documents may not otherwise be used or disseminated in contravention of any confidentiality requirements imposed by law. See Article 88A, §6; Article 76A, §3(c)(iii). Cf. 65 Opinions of the Attorney General 365, 368-70 (1980) (custodian may not permit inspection of personnel files by unauthorized persons).

STEPHEN H. SACHS
ATTORNEY GENERAL
ELEANOR M. CAREY
DEPUTY ATTORNEY GENERAL
PAUL F. STRAIN
DEPUTY ATTORNEY GENERAL



THE ATTORNEY GENERAL

1100 N. EUTAW STREET
ROOM 606
BALTIMORE, MARYLAND 21201
301-383-7330

November 9, 1983

TO: Secretary of Human Resources Ruth Massinga

FROM: Assistant Attorney General Joel J. Rabin, *JJR*
Counsel to Department of Human Resources

RE: Authority of DHR and Local Boards of Social Services As To
Evaluation of Local Directors of Social Services

Issues

You have requested my advice on the following two questions:

(1) Does the Department of Human Resources (DHR) have authority to prescribe criteria, procedures and forms to be utilized by local boards of social service in their annual evaluation of local directors of social services?

(2) In performing this evaluation, can the local board examine and rely upon internal DHR and local department of social services documents, such as "corrective action plans," reports and correspondence, concerning the performance of the local department and its director?

Conclusion

It is my view that the Maryland statutes clearly give DHR the power to prescribe evaluation criteria and procedures for the evaluation of local directors by local boards so long as they are not inconsistent with the evaluation procedures for state employees promulgated by the Department of Personnel (DOP). I also conclude that in performing these evaluations in accord with the DHR and DOP guidelines, local boards have a right to examine internal agency memoranda, reports and correspondence which discuss the performance of the local departments and directors, which documents might be confidential or not available for other purposes.

Discussion

1. Factual background

Your questions result from the efforts of the Executive Directors of the Income Maintenance and Social Services Administrations, constituent agencies of DHR, to develop an annual evaluation process to be used by local boards of social services for local directors. In the past, evaluations have not been prepared for many local directors. On May 25, 1983, the two DHR officials proposed a package of forms, criteria and procedures to be used by local boards in making an assessment of the performance of the local directors which would then be recorded on DOP Form MS-500. The MS-500 is the form DOP has promulgated for the annual evaluation of state classified employees. DHR requested comments on the package by Sept. 30, 1983, and indicated that the materials should be considered by the boards in connection with annual evaluations to be made for calendar 1983. Final documents would be available for the 1984 evaluation.

Local directors are state classified employees selected by the local boards in the counties and the Mayor in Baltimore from a merit system list submitted by DHR. See §13(b), Art. 88A, Maryland Code. The DHR package indicated that the local boards held the "appointing authority" for the position of local director, and inherent in that authority was the responsibility for evaluating the local director's performance. This was the first time that DHR had directly addressed the question of responsibility for the evaluation of the performance of the local directors.

Most of the comments and objections submitted by local boards accepted the premise that local boards were responsible for evaluating the local directors, and addressed the detailed nature of the forms and procedures and the difficulty the local boards would have in using them. One local director, however, writing on behalf of the local directors as a group, contended that the DHR proposal usurped the statutory authority of local boards to evaluate the directors. On the other hand, one local board indicated that based upon its review of its statutory responsibilities, responsibility for evaluating local directors rested with DHR.

2. Legal authority

The local directors in the counties have been members of classified service since the position was first created by Ch. 148 of the Maryland Laws of 1967. Previously the local board was responsible for administration of state social service programs in the subdivision. The position of local director in Baltimore City was transferred from the City merit system to

the state classified service in 1974, §24B, Art. 64A; Ch. 709, Laws 1974. Pursuant to DOP policies and rules, a Probation and Annual Efficiency Report on Form MS-500 must be filled out for all state classified employees. The memorandum promulgating the latest revision of the form stated:

Annual efficiency ratings must be completed at the end of the calendar year for all Merit System Employees with a "PA" [permanent classified] status. . . . Efficiency reports although not required, may be completed for unclassified State employees since we believe that ratings for these employees, too, can be useful to your agency and your employees.

(Henry G. Bosz, Memorandum Concerning Probation And Annual Efficiency Rating Report, Jan. 10, 1978). DOP regulations require that the "agency head" see that all employees be evaluated no less than once each year, COMAR 06.01.01.38.B. "Agency head" in this regulation refers to the appointing authority of the employees. DOP Personnel Manual, Employee Evaluation, Sec. H:1:1/1. The Secretary of Personnel, of course, has broad authority to adopt rules to carry out the Merit System Law, §11, Art. 64A, and has specific authority to investigate the efficiency of state employees, §15, Art. 64A. Thus the MS 500 form must be filled out each year for local directors by their appointing authority.

The DHR interpretation that local boards are required to exercise this authority over the local directors appears correct. Sec. 1 of Art. 64A defines the appointing authority as ". . . any commission, board, or officer having power to make appointments." See, also, COMAR 06.01.01.01B(1). Sec. 13(b) of Art. 88A gives the local boards the authority to select local directors in the counties and the Mayor the authority to select the local director in Baltimore City. The Mayor, has delegated his authority to evaluate the local director to the Baltimore City Social Services Commission. Therefore, the local boards in the counties and the local commission in Baltimore City are responsible for evaluating the local directors each year on the MS 500 form.

As the Attorney General has previously advised, DHR is given broad general statutory authority over the administration of the state's social services programs and the activities of local departments of social services, e.g. 67 Op. Atty. Gen. ___ (1982). Under §2(b) of Art. 88A, DHR, through the Social Services Administration, is "responsible for. . . the supervision of local departments. . . subject to the rules and regulations prescribed in accordance with law, and to State and federal laws governing the administration of social services and public assistance." Sec. 3(a)(2) provides that of the activities of the local departments financed by state are subject to the "supervision, direction and control" of DHR. Moreover, under §13(c), local directors have a "general administrative responsibility" to DHR and are required to submit periodic reports to DHR, and an annual report to their local board in the counties and the Baltimore

City commission. Sec. 14A, which sets out duties and functions of the local boards and commission, expressly requires the local boards to consider DHR findings in performing their evaluative responsibilities. The statute requires the boards:

(6) To review the periodic evaluation of the local department which has been prepared by the [Social Services] Administration and its field supervisor or other employee, and to consult with the local director as to the proper implementation of these recommendations, and of such other recommendations as may result from evaluation made by the local board or local commission of the operation of its local department.

This office has previously concluded that the statutes cited required local departments to comply with DHR directives concerning the handling and accounting of social services funds, 67 Op. Atty Gen. ___ (1982) and the titling and insurance coverage of vehicles assigned to local departments (unpublished opinion addressed to Richard A. Batterton, June 1, 1980).

I believe these broad statutory grants of authority clearly encompass the establishment of criteria and procedures to guide local boards in performing the required evaluation of local directors. The provision of §14A quoted above makes DHR's responsibilities in this area more explicit. Such DHR criteria and procedures must be consistent with evaluation policies established by DOP and the DHR proposal appears to meet this test.

The volunteer, private citizen nature of local boards makes these guidelines all the more essential. Each local board is made up of eight private citizens appointed by the local governing authority of the subdivision and one representative of the local governing authority who serves ex officio, §14, Art. 88A. The citizen members are appointed for three year terms and are paid no salary. They are to be appointed because of their "interest capacity and objectivity" and to give a "countywide representative character" to the board. Thus DHR assistance well may be needed to insure that the annual evaluation of the local directors is both fair and meaningful. By prescribing the details of the evaluation system, DHR can better inform the local boards as to the goals and operations of the various social service programs as well as better insure that the different local directors are evaluated on a similar basis.

Therefore, I conclude that the DHR efforts to develop evaluation criteria, are a proper exercise of its administrative authority over social service programs and their personnel, and do not usurp the authority of local boards to perform the evaluations. I am not addressing the wisdom or merits of particular elements of the package proposed on May 25, 1983, but only DHR's authority. DHR

has committed itself to revising its proposal based upon the comments submitted, and the number and thoughtfulness of many of the comments suggest the need for careful review of the original proposal.

3. Use of DHR documents

You have indicated that local boards have raised the question whether or not they can examine internal DHR and local departments documents which concern local department or director performance such as "corrective action plans" to correct program deficiencies, monthly reports prepared by DHR field staff evaluating progress toward meeting of program goals, and other reports prepared by field staff concerning the visits to local departments. Examination of such documents is clearly necessary for the local boards to exercise their evaluation responsibility and, therefore, such authority is necessarily implied under their authority as appointing authority for the local director. When performing these responsibilities, the local board members are, of course, subject to the confidentiality requirements which apply to social services records, Sec. 6, Art. 88A, and intra-agency memoranda and personnel records, Secs. 3(b) and (c), Art. 76A. Thus, none of the information contained in these documents is to be used except in connection with the performance of these responsibilities.

This memorandum constitutes the advice of counsel. I would be happy to assist if you believe an Attorney General Opinion on these issues would be helpful. Please call upon me if you need further information or advice on the questions discussed in this memorandum.

JJR:al

cc: Ernestine Jones, Exec. Dir., IMA
Frank Blanton, Acting Exec. Dir., SSA
Dennis Sweeney, Chief General Counsel, OAG
James Truitt, Counsel, DOP
Joel Matz, Asst. Sec. for Admin.