

SOUTH DAKOTA DEPARTMENT OF LABOR  
OFFICE OF THE SECRETARY

**DECLARATORY RULING**

**Re: SDCL §§ 62-1-2, 62-1-3**

This matter comes before Craig Johnson, the Secretary of the South Dakota Department of Labor, having been treated as a petition for declaratory ruling under ARSD 47:01:01:04. The Secretary has determined that this is not a matter of widespread impact, so that a public hearing is unnecessary. The record consists of comments which were submitted to the Secretary on October 30, 1997.

The matter for which a declaratory ruling is sought is whether residents of "adjustment training centers," (ATCs) as such facilities are defined under SDCL § 27B-1-2 (1), are "employees" of the centers under SDCL 62-1-3. It is the Department's opinion that they are not.

The facts which the Department was asked to assume are as follows: 1) The business of an ATC is to provide evaluations, therapy, and intensive day and residential training and support service to developmentally disabled individuals (residents), including, but not limited to, employment training and work experience; 2) Staff hired by the ATC assists the residents in acquiring and maintaining those life skills which enable the resident to cope more efficiently with the demands of his physical, mental and social efficiency. This includes programs of structured education and treatment, including, but not limited to, work experience; 3) As part of the habilitation, the residents may provide services to outside entities, i.e., McDonald's; 4) The resident does not receive a wage or any income from the outside entity for the services he performs; and 5) For each hour of work experience, the resident receives a stipend from the ATC, i. e. \$.0.75.

For an ATC resident to be an employee of the ATC, a "contract of employment" or "contract for hire" must exist. SDCL 62-1-3; See E.g., Goodman v. Sioux Steel Co., 475 N.W. 2d 563 (S.D. 1991). The reason for this is that:

Compensation law is a mutual arrangement between the employer and the employee under which both give up and gain certain things... To thrust upon a worker an employee status to which he has never consented would not ordinarily harm him in a vicarious liability suit by a stranger against his employer, but it might well deprive him of valuable rights under the compensation act, notably the right to sue his own employer for common-law damages.

Larson, Workmen's Compensation Law, §47.10 (1992).

The ATCs described in the petition do not enter into contracts of employment with their residents. A contract for employment is an exchange of labor for compensation, which is intended to directly economically benefit the transacting parties. The usual profession of an ATC, as noted above, is to provide evaluations, therapy, training and support service to developmentally disabled individuals; residents benefit from these functions, but do not perform them. It is fairly and clearly inferred that the ATC derives no direct economic benefit from the residents' work. The small amount of the stipend is irrelevant in itself, particularly in light of SDCL § 62-4-28, but the stipend is clearly intended to advance the goals set out above -- for residents to learn life skills which will enable them to cope physically, mentally, and socially. It is not intended to create a quid pro quo economic relationship. The Secretary therefore concludes that, in the Department's opinion, a resident of an ATC is not an "employee" under SDCL §62-1-3.

Dated this 18th day of February, 1999.

  
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Craig Johnson  
Secretary  
South Dakota Department of Labor