

STATE AUDITOR
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August 23, 2007

The Honorable Tom Fisher, State Senator
Chair of the Administrative Rules Committee
1524 Sundance Sq. South
Fargo, ND 58104

AUG 24 2007

Dear Senator Fisher:

I'm writing in response to your July 31, 2007 letter relating to the current exemption of the Office of the State Auditor from North Dakota Century Code (NDCC) Chapter 28-32, the Administrative Agencies Practice Act. Specifically you requested that we respond to four questions that were provided in your correspondence. Our responses are as follows:

1. Yes, we believe the Office of the State Auditor does require exemption from the rulemaking provisions of NDCC Chapter 28-32 and the adjudicative proceedings of Chapter 28-32. Our reasoning for this position is:
 - a) Our office does not deal directly with the public in any rule or regulation generating role. Thus, our rules concern only the internal management of our agency and do not directly or substantially affect the procedural or substantive rights and duties of any segment of the public.
 - b) Our office does not hold any type of adjudicating proceedings or hearings.
 - c) Our office is required by federal and state law to follow specific standards issued by the federal government or by other governing bodies (such as the American Institute of Certified Public Accountants). These standards routinely change and we are required to implement either the modified standard or a new standard within a specific, limited timeframe. Any type of hearing or administrative proceeding relating to these standards would be an unnecessary bureaucracy that would cause significant inefficiencies for no benefit since we are required by law to follow them and there is virtually no chance any such hearing or administrative rule could have any effect on the standard or our method of implementing it.
2. No, the Office of the State Auditor does not make any rules which are of general statewide application that might affect the rights or duties of persons outside our agency.
3. No, the Office of the State Auditor does not hold hearings to act on complaints, applications or appeals.
4. We believe the exemption for the Office of the State Auditor under subsection 2 of NDCC Section 28-32-01 should be unchanged.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bob Peterson".

Robert Peterson
State Auditor