

**N.D.A.G. Letter to Gregg (Feb. 13, 1986)**

February 13, 1986

Mr. John R. Gregg  
Bottineau County State's Attorney  
P.O. Box 26  
Bottineau, ND 58318

Dear Mr. Gregg:

Thank you for your letter of December 26, 1985, posing four individual questions to this office for answers. I apologize for the delay in responding to you. However, the varied subject matters covered by your opinion request necessitated my dividing up your request amongst several attorneys for legal research purposes.

Your first question concerns the inherent authority of the court to issue an Order to Apprehend and its application to child support matters. A staff attorney of this office has discussed this matter further with you and has determined that the essence of your inquiry is a request for general information concerning contempt powers of a court and its application to child support matters. My staff attorney has drafted a research memorandum on this particular question which should be of assistance to you in attempting to gain additional facts and information on this subject. A copy of that memorandum is enclosed for your use and review. If you have a specific question concerning this subject, please refer that question to my attention so that I may further assist you.

Your second question concerns the obligation of the county to pay the expenses, including the fees of a hired attorney, of the public administrator who has initiated proceedings for the appointment of a guardian for an indigent. It is assumed that the action of the public administrator described in your letter falls within those duties and powers listed in N.D.C.C. §11-21-05. We mention this assumption as it would appear the public administrator becomes the ex officio guardian for an indigent and further court authority is not needed.

The statutes concerning the public administrator provide that the administrator has the same powers as special administrators, guardians, and conservators. Further, the statutes state that the public administrator may institute suits and prosecutions necessary to recover the property, debts, papers or other estate of any deceased person or any minor or incapacitated person when such estate or person is in his charge or custody. N.D.C.C. §11-21-07. It is true that N.D.C.C. §11-21-09 prohibits a public administrator from charging a fee as an attorney in the administration of the estates of decedents of which he shall be the administrator. However, we do not interpret this statute so as to prevent the administrator from incurring attorney's fees in the necessary suits otherwise provided by law. N.D.C.C. §11-21-07.

Therefore, it would appear that expenses of the public administrator in causing lawsuits to be filed in furtherance of the duties and powers that are statutorily provided to him would be a bona fide expense of the public administrator. Naturally, however, such an expenditure of moneys by the county must be in accordance with annual appropriations of the Board of County Commissioners before they may be approved. N.D.C.C. §§11-23-06, 11-23-09.

Your third question concerns whether a county court must furnish a jailer with an Order of Commitment where a person arrested has appeared initially before a magistrate for the setting of bond and the original warrant of arrest has been returned to the court. I believe this subject warrants a formal attorney general's opinion. Thus, I have prepared such an opinion which you will find enclosed with this letter on this particular subject.

Your fourth and final question is whether the Board of County Commissioners may take moneys out of the fund established pursuant to N.D.C.C. §29-27-02.1 and pay victims of theft crimes an amount equal to their loss. It is assumed that the funds deposited into the county's general fund referred to in your letter is the second sentence of N.D.C.C. §29-27-02.1 which refers to the forfeiture of bail bond or other property or money deposited as bail to the state. These particular funds are not earmarked for the state school fund. N.D. Const. Art. IX, §1.

North Dakota counties are political subdivisions which have and exercise only those powers provided for by law. N.D. Const. Art. VII, §2; Murphy v. City of Bismarck, 109 N.W.2d 635 (N.D. 1961). The powers of the counties are found at N.D.C.C. §§11-11-11, 11-11-14. In reviewing both of these statutes, one discovers no authorization to compensate victims of crime for their losses suffered as a result of the criminal activities. Indeed, the lack of such authorization by the legislature suggests that any attempt by any political subdivision to make donations in aid of any individual, except for the reasonable support of the poor, may be in violation of Article X, §18 of the Constitution.

Therefore, the only conclusion to be drawn is that the Board of County Commissioners may not make use of those funds to be deposited into the county's general fund pursuant to N.D.C.C. §29-27-02.1 so as to pay victims of crime in an amount equal to their loss from theft.

Sincerely,

Nicholas J. Spaeth

cv  
Enclosures