

N.D.A.G. Letter to Koppy (March 7, 1988)

March 7, 1988

Mr. Allen Koppy
Morton County State's Attorney
210 Second Avenue N.W.
Mandan, ND 58554

Dear Mr. Koppy:

Thank you for your letter of January 7, 1988, in which you seek my opinion on several questions regarding meal allowances under N.D.C.C. § 44-08-04. I will answer your questions in the order presented.

N.D.C.C. § 44-08-04 states, in relevant part, as follows:

44-08-04. Expense account -- Amount allowed -- Verification. Except as provided in section 44-08-04.1, each elective or appointive officer, employee, representative, or agent of this state, or of any of its subdivisions, agencies, bureau, boards, or commission, may make claim for meals and lodging while engaged within this state in the discharge of a public duty away from the claimant's normal working and living residence for all or any part of any quarter of a day. Claims may also be made for meals which are included as part of a registration fee for a conference, seminar, or other meeting and for meals attended at the request of and on behalf of the state or any of its subdivisions, agencies, bureaus, boards, or commissions; however, if a meal is included in a registration fee, the applicable quarter allowance cannot be claimed for that meal. Claims for meals specifically included in a registration fee for a conference, seminar, or other meeting must be allowed even if the city at which the conference, seminar, or meeting is held or the meal is provided is the claimant's normal working and living residence. Upon approval of the claim, it must be paid as an allowance at the following rates for each quarter of any twenty-four-hour period:

1. First quarter is from six a.m. to twelve noon and the sum may not exceed three dollars and fifty cents in state, or six dollars out of state. No reimbursement may be made if travel began after seven a.m.
2. Second quarter is from twelve noon to six p.m. and the sum may not exceed five dollars in state, or nine dollars out of state.

3. Third quarter is from six p.m. to twelve midnight and the sum may not exceed eight dollars and fifty cents in state, or fifteen dollars out of state.
4. Fourth quarter is from twelve midnight to six a.m. and the sum must be the actual lodging expenses not to exceed thirty-five dollars.
5. Provided, however, that the preceding four subsections are not applicable unless the person concerned has been out of the headquarters or normal place of employment for four hours or overnight.

Verifications of claims may not be required for the first three quarters listed above and only a lodging receipt is required for the fourth quarter. . . .

Your first question concerns whether a county employee may make a claim for a meal if the employee is away from headquarters for four hours or more attending a meeting or conference held in the same town or city as the employee's headquarters. The general rule set forth in N.D.C.C. § 44-08-04 is that the claimant must be away from his normal working and living residence for all or any part of any quarter of a day before he is entitled to reimbursement for any meals. However, an exception to this general rule exists for "meals which are included as part of a registration fee for a conference, seminar, or other meeting and for meals attended at the request of and on behalf of the state or any of its subdivisions, agencies, bureaus, boards, or commissions." This exception clearly contemplates business meetings where meals are served and the employee is attending at the request of and on behalf of the employing governmental body. I do not interpret the general rule requiring that the individual be out of the headquarters or normal place of employment for four hours or more as applying to the situation described above.

Your second question asks whether an employee who has been away from headquarters for four hours or more is eligible for third quarter meal expense reimbursement regardless of the time the meal was taken during the third quarter. The meal allowances provided by N.D.C.C. § 44-08-04 are not dependent upon when the meal is actually taken.

Your third question concerns whether a meal expense claim may be denied on the grounds that the claimant had time to eat at home or at headquarters prior to departing on official business that will require the person to be away from headquarters for four or more hours. This question was previously presented to a member of my staff by a Morton County employee. The employee had left work at the normal time, went home for an hour or so, and then departed for out-of-town business that lasted more than four hours. Apparently, there was some disagreement over whether a meal allowance was appropriate inasmuch as the employee had the opportunity to eat at home prior to leaving.

N.D.C.C. § 44-08-04 does not require that the employee depart at any specified time to be eligible for meal reimbursement for the third quarter. The Legislature has specifically

provided that meal expense reimbursement is not available for the first quarter unless travel began after 7:00 a.m. In the absence of a similar limitation relative to the third quarter, it is my opinion that the governing board may approve the employee's meal expense allowance regardless of when the employee actually departed on the official business.

Although it is my opinion that the governing body may reimburse an employee under the factual circumstances described above, I do not believe that N.D.C.C. § 44-08-04 legally requires the governing body to do so. It is my interpretation of N.D.C.C. § 44-08-04 that the governing body has general discretion to implement reasonable policies regarding the statutory guidelines. An analysis of the various factual situations that may arise in the context of a public employee's business travel clearly reveals that N.D.C.C. § 44-08-04 does not provide definitive guidance in every situation. For instance, N.D.C.C. § 44-08-04 seemingly authorizes the reimbursement of meal expenses of an employee who has been away from his headquarters for at least four hours during a quarter regardless of the circumstances. Common sense suggests that the Legislature did not intend as a matter of law to provide second quarter reimbursement for an employee who departed headquarters at 1 p.m. and returned at 5 p.m. Clearly, state agencies and political subdivisions must exercise discretion and reasonable judgment in determining whether meal allowances are appropriate.

It is my conclusion that the situation described in your letter requires an exercise of discretion by Morton County officials. As such, I am precluded from rendering a definitive legal opinion on the question presented.

In resolving this issue, it may be worthwhile to consider the specific authorization in N.D.C.C. § 44-08-04 for "the head of any department, institution, or agency of this state [to] set a rate for such expenses less than those set forth in this section for any person or persons under his authority." Inherent in the authority of the governing body to set a "rate" less than the meal allowances provided in N.D.C.C. § 44-08-04 is the discretion to apply the reduced "rate" under specified circumstances. For instance, if an employee has a reasonable opportunity to eat a meal at home prior to departing on official business, it may be desirable to establish a reimbursement "rate" that is less than the statutory allowance. N.D.C.C. § 44-08-04 requires that the reduced meal allowance be a fixed "rate" and, therefore, it should be established as a matter of general policy rather than on a case-by-case basis. Even when a governmental body has implemented a reduced meal allowance rate, the statutory requirement that the employee be away from his employment headquarters for at least four hours would continue to apply.

Your fourth question is whether the claimant must actually incur a meal expense in order to be eligible for the statutorily prescribed reimbursement amount. The reimbursement amounts set forth in N.D.C.C. § 44-08-04 are in the nature of an allowance and do not necessitate an actual expenditure. Indeed, the statute states that "verifications of claims may not be required for the first three quarters" and that a receipt is only required for lodging. It is clear, therefore, that the actual expenditure plays no part in the reimbursement process.

I hope that this discussion has been of assistance to you.

Sincerely,

Nicholas J. Spaeth

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