

N.D.A.G. Letter to Kuhn (July 29, 1991)

July 29, 1991

Gerald A. Kuhn
Logan County States Attorney
P.O. Box 50
Napoleon. ND 58561

Dear Mr. Kuhn:

Thank you for your July 12, 1991 letter concerning whether county commissioners may decide to not reimburse county employees for meal expenses when the employees are not away from their normal working and living residences overnight.

N.D.C.C. § 44-08-04 governs claims for meals and lodging made by officers and employees of the "state, or of any of its subdivisions, agencies, bureaus, boards, or commissions." In prior opinions of this office, the word "subdivisions" has been construed to include all of the political subdivisions of the state, including counties. Letter from Robert O. Wefald to Earle R. Myers, Jr. (December 23, 1981); Letter from Gerald W. Vandewalle to Eugene Rich (June 28, 1965). Therefore, the provisions of N.D.C.C. § 44-08-04 relating to the manner and rates of reimbursement apply to counties.

N.D.C.C. § 44-08-04 provides that officers and employees may claim reimbursement for meals if they are away from normal working and living residences for all or any part of any quarter of a day. In a recent letter I stated that although the county may approve reimbursement if this requirement is met, the county is not necessarily required to do so in all circumstances. Letter from Nicholas J. Spaeth to Allen Kopyy (March 7, 1988). I reasoned that because N.D.C.C. § 44-08-04 does not provide definitive guidance in every situation, the governing body has the discretion to implement reasonable policies regarding the statutory guidelines. Therefore, a county may deny reimbursement if an employee is away from his or her normal working and living residence only from 1:00 p.m. to 5:00 p.m. Of course, discretion may be exercised only in connection with those circumstances for which the law does not provide definitive guidance. Where the plain language of N.D.C.C. § 44-08-04 requires reimbursement the county must follow the statute.

Reimbursement is required when an employee must travel on official business under circumstances requiring him or her to be away from the regular place of work or residence at times when meals are normally consumed. If the legislature intended that employee be reimbursed only when away from home overnight, reimbursement would be expressly limited to those occasions.

You question whether language in the final paragraph of N.D.C.C. § 44-08-04 permits an exception to the general requirements of the statute. That language provides that the

"head of any department, institution, or agency of this state may set a rate for such expenses less than those set forth in this section for any person or persons under his authority." This language does not apply to counties or other political subdivisions, because only state departments, institutions or agencies are mentioned in this paragraph. Letter from Gerald W. Vandewalle to Eugene Rich (June 28, 1965). Therefore, counties must pay the rate set forth in N.D.C.C. § 44-08-04, must provide reimbursement for meal expenses in all cases when employees are away from their normal working and living residences overnight and may not deny reimbursement in all cases where employees are not away overnight.

Sincerely,

Nicholas J. Spaeth

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