

**OPINION  
62-229**

June 5, 1962 (OPINION)

STATE TOXICOLOGIST

RE: Counties - Expert Witness Fees

Your letter dated May 29, 1962, has been received. You relate that in a recent criminal case in your county it was necessary for you to utilize the services of the State Toxicologist and that he testified as an expert witness at the trial in connection with chemical or "breathalyzer" tests which are used to determine the intoxication of an individual. You state that your county cannot resolve what witness fees, if any, Dr. Prouty should be entitled to, but that it is in your impression that he should probably receive expert witness fees in a case like this. You have asked for our opinion or advice on this point.

Section 15-12-21 of the 1961 Supplement to the North Dakota Century Code provides as follows:

STATE TOXICOLOGIST - DUTIES - FEES. The office of state toxicologist shall be maintained in conjunction with the college of pharmacy at the North Dakota state university of agriculture and applied science, for the purpose of providing toxicological services to any person or the state or any political subdivision utilizing such services. The president of the North Dakota state university of agriculture and applied science, with the advice of the dean of the college of pharmacy shall employ the services of a qualified toxicologist who shall be ex officio state toxicologist. The toxicologist may charge fees for services rendered. Such fees shall be set by the state toxicologist, with the approval of the dean of the college of pharmacy and shall be turned over monthly to the state treasurer and credited to the state general fund. The state toxicologist shall be available to the college of pharmacy for such other duties as the dean thereof shall designate."

That section clearly provides that the toxicologist to be hired by the North Dakota State University shall provide toxicological services to "any person or the state or any political subdivision utilizing such services." He is also classed as "ex officio state toxicologist." It is our view that the fees he may charge for services rendered are not applicable to a situation as you describe, that is, testifying on behalf of the state in a criminal action. It is our view then that since the toxicologist in question is the official state toxicologist, and due to the fact that he is a salaried state employee, that he is not entitled to so-called expert witness fees, notwithstanding that he is in effect giving expert witness testimony. Further, we do not believe that he is entitled to the regular witness fees, as his function in case like this is no different than that of a policeman or patrolman testifying in a similar case.

Therefore, it is our opinion that the State Toxicologist is not entitled to expert witness fees in this case or similar cases, nor is he entitled to the regular witness fees due to the fact he is a salaried state employee. However, he is, of course, entitled to the regular state mileage fees and subsistence and lodging expenses within the limits set by law.

LESLIE R. BURGUM

Attorney General