

OPINION
62-252

July 6, 1962 (OPINION)

STATE'S ATTORNEYS

RE: Defense of County Officers - Civil Actions

This office acknowledges your letter of July 3, 1962, in which you requested the opinion of this office on the proposition as to whether or not it is your duty as state's attorney to defend one of your county officers in a civil action against the said officer.

Section 11-16-01 of the North Dakota Century Code outlines the duties of the state's attorney and among other things sets out that he shall: (5) Defend all suits brought against the state or against his county; (9) Give, when required and without fee, his opinion in writing to the county, district, township, and school district officers on matters relating to the duties of their respective offices; (12) Act as legal adviser of the board of county commissioners, attend the meetings thereof when required, and oppose all claims and actions presented against the county which are unjust or illegal; (13) Institute an action in the name of the county to recover any money paid upon the order of board of county commissioners without authority of law as salary, fee, or for any other purpose, or any money paid on a warrant drawn by any officer to his own order or in favor of any other person without authorization by the board of county commissioners or by law; (14) Institute an action in the name of the county to restrain the payment of any money described in any order or warrant of the kind described in subsection 13 when he secures knowledge of such order or warrant before the money is paid thereon.

Nowhere in chapter 11-16, which prescribes the duties and powers of the state's attorney, do we find an duty imposed upon him to defend a county official in a civil action brought against said official. Furthermore, there is no statement i the chapter from which the implication could be drawn that there is such an existing duty. The responsibilities of the state's attorney appear to be pretty well spelled out in section 11-16-01 of the North Dakota Century Code and they do not include any reference to a defense of county officers.

We believe that section 44-08-11 of the North Dakota Century Code clearly indicates that it is not the duty of the state's attorney to defend a law enforcement officer. This section reads as follows:

STATE AND OTHER POLITICAL SUBDIVISIONS TO FURNISH COUNSEL TO DEFEND LAW ENFORCEMENT OFFICERS. The state or any political subdivision of the state may furnish legal counsel to defend any law enforcement officer in any action brought against such officer to recover damages arising out of any act of such officer in good faith and in the performance of his official duties."

The county commissioners, if they believe the officer acted in good faith and in performance of his official duties, could hire legal counsel to defend him. If on the other hand they do not feel he acted in good faith they would not be obliged to make an provision for his defense.

At a somewhat recent national convention of attorneys generals of the United States this subject was discussed and it appeared to be the conclusion of the attorneys generals that there was not state in the Union wherein the prosecuting attorney of a county, district, or parish is obligated to defend a county officer in a civil action. If such were the case, a state's attorney might be compelled to spend a considerable portion of his time in preparing and trying such cases. The present salary of the state's attorney in North Dakota would indicate that the Legislature has not contemplated any such responsibility.

Therefore, it is the opinion of this office that you are not obliged to represent the county officer in a civil action brought against such officer under such circumstances as are set forth in your letter requesting an opinion.

LESLIE R. BURGUM

Attorney General