

OPINION
65-480

Welfare - County Employees - Salary - State's Attorney

Mr. Clinton R. Ottmar, State's Attorney
Stutsman County

This is in reply to your letter of 27 April 1965 in regard to a problem in regard to payment of Welfare Board employees' salaries. Your question is stated as:

"Do the County Commissioners have authority to adjust the salary of person in the Welfare Department. Furthermore, if suit is brought by the affected parties in the Welfare Department against the County Commissioners either as commissioners of Stutsman County or as individuals, is the State's Attorney's Office obligated to defend them when such action is instituted for the purpose of having the Commissioners authorize payment of pay raises plus possible damage?"

You call our attention to our opinion to Mr. Harold Bullis dated 13 March 1963 in regard to the County Commissioners' lack of authority to adjust wages set by the Welfare Board. You also call our attention to our opinion of date 2 June 1964 at page 252 of the Report of the Attorney General of North Dakota for the period 1 July 1962 to 30 June 1964 with regard to the duty of the State's Attorney in defending law enforcement officers.

We believe the opinion first mentioned above thoroughly expresses the principles applicable to the matter of the County Commissioners attempted supervision of the matter of salary of County Welfare Board employees.

While not so directly in point, generally speaking, the second opinion above mentioned sets out principles quite closely in point. In this general field you might also consider State ex rel. Johnson v. Baker, 74 N.D. 244, 21 NW2d 355; Department of State Highways v. Baker, 69 N.D. 702, 290 N.W. 257; and State ex rel. Miller v. Leech, 33 N.D. 513, 157 N.W.492. In this regard you might also consider subsections 5, 9, and 12 of section 11-16-01 of the North Dakota Century Code as follows:

“DUTIES OF THE STATE'S ATTORNEY. The state's attorney is the public prosecutor, and shall:

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5. Defend all suits brought against the state or against the county.

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9. Give, when required and without fee, the state's attorney's opinion in writing to the county, district, township, and school district officers on matters relating to the duties of their respective offices.

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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.

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On the basis of the above it would be our opinion that the State's Attorney is not obligated to represent the members of the Board of County Commissioners as individuals. Where the action is brought against the county, or the county is named as a party defendant, the State's Attorney still is in the position of defending the best interests of the county, but we believe the last part of subsection 12 as quote above necessarily imports the converse of the statement made, i.e., that the State's Attorney is not required to "oppose" claims and actions presented against the county which are just and legal.