

OPINION
69-376

January 14, 1969 (OPINION)

Mr. Lester J. Schirado
State's Attorney
Morton County

RE: Taxation - Collection of Personal Property Taxes - Sheriff's Milage

This is in response to your letter in which you call our attention to Section 57-22-25 of the North Dakota Century Code and then ask whether or not a sheriff is limited to five cents per mile rather than ten cents per mile on the collection of delinquent personal property taxes for the miles actually and necessarily traveled.

Section 57-22-25 as it appears now in its present form is the result of the enactment of Chapter 122 of the 1935 Session Laws. It set the rate at five cents per mile. Said chapter contained the clause: "All acts or parts of acts in conflict herewith are hereby repealed." This act was enacted at a time when the initiated measure adopted on June 29, 1932 related to mileage for officials, including the sheriff, was in full force and effect and authorized mileage to the sheriff at the rate of seven cents per mile.

In 1939, by Chapter 123, the initiated measure was amended and reenacted, setting the rate at ten cents per mile for the sheriff. This act also provided that any or parts of Chapter 119 of the 1931 Session Laws in conflict therewith were repealed. But, Chapter 119 of the 1931 Session Laws did not pertain to mileage for the sheriff, but pertained primarily to county superintendents and allowances for mileage.

The law pertaining to sheriff's mileage (now Section 11-15-12) was again amended in 1949 by Chapter 123 and in 1955 by Chapter 113. None of these amendments indicate that the provisions of Section 57-22-25 were superseded or repealed.

Section 1-02-07 of the North Dakota Century Code provides that a special provision shall prevail over a general provision, unless the general provision was enacted later and shows a legislative intent that the general provision was to prevail.

Section 57-22-25 is a special provision and Section 11-15-12 is a general provision as between these two sections. As stated before, the enactments and amendments to Section 11-15-12 do not indicate that same were to repeal or supersede any of the provisions of Section 57-22-25.

Based on the foregoing, it is our opinion that the provisions of Section 57-22-25 still prevail as to the mileage allowances stated therein for services rendered as provided for in said section and the mileage is limited to five cents per mile.

The Legislature is now in session and the introduction of a bill to clarify or modify this situation could be accomplished upon the passage of the bill.

HELGI JOHANNESON
Attorney General