

May 11, 1970 (OPINION)

Mr. Lloyd F. Zander

Commissioner

Department of Veterans' Affairs

RE: Counties - Veterans' Service Officers - Mileage and Travel Expen

This is in response to your letter in which you relate that during a recent conference it was learned that a variation exists as to reimbursement to county veterans' service officers for personal vehicle mileage in the various counties in the State of North Dakota. One county allowed 7 1/2 cents per mile, other allowed 8 1/2 cents, and still others allowed 9 cents. Some counties allow only \$12.00 for meals and lodging per day, others allow \$15.00. You then ask for a clarification on this question.

You also ask in the event the counties may reimburse at the rate of 9 cents per mile and \$15.00 for four-fifths of a day, do the counties have the prerogative of paying at a lesser rate?

You further inquire if the rate per mile should have been 9 cents and \$15.00 per day but payments were made in a lesser amount, may the service officer submit a claim to the county for the arrears due him?

Section 37-14-19 of the North Dakota Century Code pertains to the salary and expenses of a county veterans' service officer and provides as follows:

SALARY AND EXPENSES OF COUNTY VETERANS' SERVICE OFFICER. The county veterans' service officer shall be paid such monthly salary for full-time or part-time work as the board of county commissioners shall deem commensurate with the needs of the situation, together with actual living expenses when absent from his established office upon official business in an amount not exceeding that allowed to state officials, upon itemized statements submitted by him and supported by subvouchers or receipts as provided by section 21-05-01 of this code, and his actual transportation expenses, which shall not exceed the amounts provided by section 54-06-09 of this code, and shall be in itemized form showing the mileage traveled, the days when and how traveled, and the purpose thereof, the days when and how traveled, and the purpose thereof, verified by his affidavit and support by subvouchers or receipts as provided by section 21-05-01 of this code."

It is specifically noted that the actual travel expenses shall not exceed the amounts set forth in section 54-06-09 of the North Dakota Century Code. It is also noted that the county commissioners are authorized to pay actual living expenses on official business but not to exceed the amount allowed to State officials. However, the expenditures for which reimbursement is claimed must be supported by subvouchers or receipts as provided for in section 21-05-01 of the

North Dakota Century Code.

54-06-09, as amended, provides as follows:

MILEAGE AND TRAVEL EXPENSE OF STATE OFFICERS AND EMPLOYEES. State officials, whether elective or appointive, and their deputies, assistants, and clerks, or other state employees, entitled by law to be reimbursed for mileage or travel expense, shall be allowed and paid for mileage and travel expense the following amounts:

1. The sum of nine cents per mile for each mile actually and necessarily traveled in the performance of official duty when such travel is by motor vehicle. The sum of eleven cents per mile for each mile actually and necessarily traveled in the performance of official duty when such travel is by private airplane. If only one person shall engage in such travel in a motor vehicle exceeding at any geographical point one hundred fifty miles beyond the borders of this state, reimbursement shall be limited to seven cents per mile for the out-of-state portion of the travel. When any such motor vehicle or airplane is owned by the state or by any department or political subdivision thereof, no allowance shall be made or paid for such mileage;
2. When travel is by rail or certificated air taxi commercial operator or other common carrier, including regularly scheduled flights by airlines, the amount actually and necessarily expended therefor in the performance of official duties.

Before any allowance for any such mileage or travel expenses shall be made, the official, deputy, assistant, clerk, or other employee shall file with the director of the department of accounts and purchases an itemized statement showing the mileage traveled, the days when and how traveled, the purpose thereof and such other information and documentation as may be prescribed by rule of the state auditing board or specifically requested by such board, verified by his certification. The statement shall be submitted to the state auditing board for approval and shall be paid only when approved by the auditing board."

It shall be noted that ordinarily travel by private vehicle is reimbursed at the rate of 9 cents per mile. Living expenses such as meals and lodging incurred while on official business is governed by section 44-08-04. The same provides as follows:

EXPENSE ACCOUNT - AMOUNT ALLOWED - VERIFICATION. Each elective or appointive officer, employee, representative, or agent of this state, or of any of its subdivisions, agencies, bureaus, boards, or commissions, may make claim and shall upon approval of such claim be paid as an allowance for meals and lodging while engaged within this state in the discharge of a public duty away from his normal working and living residence for all or any part of any quarter of a day at the following rates for

each quarter of any twenty-four hour period:

1. First quarter shall be from six o'clock a.m. to twelve o'clock noon and the sum shall not exceed one dollar and twenty-five cents;
2. Second quarter shall be from twelve o'clock noon to six o'clock p.m. and the sum shall not exceed one dollar and seventy-five cents;
3. Third quarter shall be from six o'clock p.m. to twelve o'clock midnight and the sum shall not exceed three dollars;
4. Fourth quarter shall be from twelve o'clock midnight to six o'clock a.m. and the sum shall not exceed nine dollars;
5. Provided, however, that the preceding four subsections shall not be applicable unless the person concerned has been out of the headquarters or normal place of employment for six hours or overnight.

Verifications of claims shall not be required for the first three quarters listed above and only a lodging receipt shall be required for the fourth quarter; provided, however, the amount paid for such lodging shall not be required to be listed.

Such persons engaged in travel without the state shall not claim a sum in excess of eight dollars a day for meals and in addition thereto actual lodging expenses. Verification by receipt for such out-of-state travel expense shall be required only for lodging expense claimed.

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. Verification of any other type of expense not prescribed by this section shall be as prescribed by the state auditing board except no receipt shall be required for taxi or cab fares up to and including the sum of five dollars. The state auditing board shall disapprove any claim it shall determine to be in error or unlawful or not within the limits of legislative appropriations. The travel expenses of the governor, lieutenant governor, judges of the supreme court, district courts, and county courts of increased jurisdiction, and members of the legislative assembly shall not be limited by the expense allowance limitations prescribed by this section."

It should be noted that the head of any department, institution or agency may set a rate for such expenses less than those set forth in this section. But this does not apply to counties. Section 37-14-19 authorizes the county commissioners to allow actual living expenses in an amount not exceeding that allowed to State officials. The county commissioners under their superintending powers may budget the total amount of money for travel and living expenses for official business.

We would further note that section 3-14-19 makes specific reference to the subvouchers or receipts set forth in section 21-05-01 be furnished for all claims for reimbursement. Such subvouchers or receipts are necessary because of the specific statutory provision. It is the same law which authorizes mileage at the rate not to exceed the amount specified in section 54-06-09. We cannot simply take part of this section and apply it and disregard the other provisions.

It is, therefore, our opinion that the county veterans' service officer may be allowed actual expenses for travel by private vehicle at the rate not to exceed 9 cents per mile as authorized by section 54-06-09 of the North Dakota Century Code.

It is our further opinion that allowances for actual expenses for meals and lodging while engaged in official business within this State may be allowed at a rate not to exceed the amounts set forth in section 44-08-04, but the county commissioners may budget the total amount available for such purposes. Receipts for meals and lodging, if same exceed \$1.00, must be furnished for any claim for reimbursement.

It is our further opinion that any payments received in the past, even if such amount was less than the maximum permitted, does not constitute grounds for submitting additional vouchers for additional reimbursement.

HELGI JOHANNESON

Attorney General