

**OPINION
70-336**

April 13, 1970 (OPINION)

Mr. Walter R. Hjelle

State Highway Commissioner

RE: State - Highway Department Employees - Relocation Costs

This will acknowledge receipt of your request for an Opinion as to your legal authority to adopt a policy and make relocation cost payments to Highway Department employees who are permanently transferred from one headquarters location to another when such transfer is deemed to be the most beneficial to the State.

The Legislature authorized you to determine the "compensation" to be paid to Highway Department employees in section 24-02-03(4), N.D.C.C., and to determine the "amount of the expenses" actually and necessarily incurred by department employees in the performance of their duties in section 24-02-07, N.D.C.C. The legislative appropriation to the Highway Department in Chapter 14, Session Laws, 1969 contemplated the payment of both compensation and expenses of employees.

The question then remains, "Are the costs of moving the household of an employee transferred from one headquarters to another to be considered compensation or expenses incurred in performing duties, as such terms were used by the Legislature in the above statutes?"

We held in an Opinion to the State Auditing Board on February 24, 1966 that, "While, in the general context of reimbursement of 'any expenses incurred in the performance of employment', the voucher is very probably unusual, we see no reason why agreement to pay these expenses might not be permitted as 'other compensation'. . ." The voucher in that case was for payment directly to the Transfer and Storage Company and involved a person newly hired to begin performing his duties after the moving costs were incurred.

Expenses incurred by State officials and employees in general have been specifically allowed by law in section 44-08-04, N.D.C.C. in the form of an allowance for meals and lodging, and in section 54-06-09, N.D.C.C. in the form of a mileage allowance for travel. Because the word "expenses" is uniformly used to describe costs incurred beyond meals, lodging and mileage, it is our opinion that the Legislature did not intend to disallow other expenses by making specific rules to be applied to the expenses of meals, lodging and mileage. By the authority delegated to you in section 24-02-07, N.D.C.C., you have been given the responsibility of determining what costs that employees may incur as "actually and necessarily incurred in the performance of their duties", and fixing and determining the amount thereof which will be allowed.

It is our opinion that you may legally adopt a moving cost policy and pay for such costs as an expense actually and necessarily incurred in the performance of duties. Applying the rules adopted by the Supreme

Court of North Dakota in the case of State ex rel. Lyons v. Guy, 107 N.W.2d. 211 for distinguishing emoluments or compensation from expenses, we are of the opinion that moving costs cannot be paid as compensation except under circumstances that existed and which promoted the opinion to the State Auditing Board on February 24, 1986.

HELGI JOHANNESON

Attorney General