

**OPINION
75-156**

July 16, 1975 (OPINION)

Mr. Raymond Rund
State's Attorney
Steele County
Finley, ND 58230

Dear Mr. Rund:

This is in response to your letter of June 10, 1975, wherein you make inquiry of this office relative to Senate Bill No. 2182, amending Section 11-15-12 of the North Dakota Century Code, as amended, as the same concerns amounts the county can pay a sheriff or his deputy for mileage in the performance of his official duties. You submit the following facts and inquiry in your letter:

Subsection 1 of this statute, as amended, provides that the Sheriff or his deputy shall be paid only 'The sum of fifteen cents minimum per mile when travel is by motor vehicle. . .'

The question is what is the maximum that the county can pay for such mileage, when there is none stated in the statute? Did the Legislature intend to allow more money than fifteen cents per mile, and if so, how much?

If the interpretation of this amended statute means that the County Commissioners can allow more than fifteen cents per mile, we would like to know that too.

We would note the amendment which provides as follows:

11-15-12. SHERIFF'S MILEAGE.) A sheriff or his deputy, for each mile actually and necessarily traveled within this state in the performance of official duties, shall be allowed and paid only the following amounts:

1. The sum of fifteen cents minimum per mile when travel is by motor vehicle
2. When travel is by rail or other common carrier the amount actually and necessarily expended therefor.

When such travel is outside the state in the performance of official duties, whether by motor vehicle or by rail or other common carrier, such officer shall be allowed and paid not less than fifteen cents per mile when such travel is by motor vehicle, including travel on extradition, and if by rail or other common carrier his actual and necessary travel expenses. (Emphasis supplied)

Noting that there exist two limiting or qualifying words in the statute which tend to establish minimums, i.e., "only" and "minimum", we must attempt to interpret the statute as complete and give credence to each word therein used. To do this we must consider the

history of the enactments which constitute the statute as it now exists.

Prior to the 1975 Legislative session, the word of qualification modifying the sum, "minimum" did not appear in the statute. This is a qualification only of the sum of "fifteen cents" which is now stated as the "minimum" per mile. There is no stated maximum. The provision setting forth the amounts that shall be allowed and paid are qualified by the word "only." Since the minimum rate is established by insertion of the "minimum", we can only conclude that the qualification of amount by the word "only" must refer to the type of reimbursement. In other words, the only reimbursement authorized under the statute is money, thereby excluding such other forms of reimbursement established by such items as allowances for tires, repairs, vehicular maintenance, etc. This, of course, leaves the maximum amount that may be paid, on a per mile basis, with the county commissioners and the exercise of their discretion.

In direct response to your inquiry, we are of the opinion that there exists no stated maximum that the county commissioners can allow on a per mile basis to a sheriff or his deputy for each mile actually and necessarily traveled within this state in the performance of official duties, however, all such allowances shall be on a per mile basis only and not to include additional allowance for vehicular expense.

We trust this answers your inquiry.

Sincerely,

ALLEN I. OLSON

Attorney General