

**OPINION
78-178**

June 30, 1978 (OPINION)

Mr. Leroy P. Anseth, Esquire
Williams County State's Attorney
P. O. Box 476
Williston, ND 58801

Dear Mr. Anseth:

This is in response to your letter of May 4, 1978, in which you request our opinion on North Dakota Century Code Section 11-16-09.

You point out that all attorneys, including state's attorneys, are now required to accumulate fifteen hours a year of continuing legal education. You point out that under Section 11-16-09 each county must establish a State's Attorney's Contingent Fund, the amount of which is determined based upon the population of the county. You then ask the following question:

May the Contingent Fund be used for education of the State's Attorney which would qualify for credit with the Continuing Legal Education Commission of the North Dakota Bar Association?

North Dakota Century Code Section 11-16-09 establishes the State's Attorney Contingent Fund with the following language:

11-16-09. STATE'S ATTORNEY'S CONTINGENT FUND. The board of county commissioners shall set aside from any funds in the county treasury not specifically appropriated or set aside for any other purpose the following sum of money to be used by the state's attorney of the county as a contingent fund for the purpose of defraying the necessary expenses that are not otherwise provided for in securing evidence, investigating criminal cases, and furthering justice:

1. Not less than five hundred dollars and not more than one thousand dollars in counties having a population of ten thousand inhabitants or less.
2. Not less than one thousand dollars and not more than fifteen hundred dollars in counties having a population of more than ten thousand and not more than twenty thousand inhabitants.
3. Not less than fifteen hundred dollars and not more than two thousand dollars in counties having a population of more than twenty thousand inhabitants.

(Emphasis added)

As you also point out in your letter, the purposes for which the Contingent Fund must be established are broader than only the investigation and prosecution of specific cases. The broad statutory language emphasized above certainly includes such laudable objectives

of justice as using the Fund moneys for continuing legal education to increase the professional knowledge, skills, and competency of the state's attorneys in those substantive legal areas directly connected with their representation of this state. We also note that under Rule 4 of the Rules of the State Bar Association of North Dakota for Continuing Professional Education of the Members of the Bar, as approved by the North Dakota Supreme Court on July 27, 1977, an attorney failing to comply with the minimum requirements for Continuing Legal Education is subject to suspension by the State Supreme Court. As the requirements for Continuing Legal Education is thus directly tied to the State's Attorney's right and ability to remain in office, we believe that the language of Section 11-16-09 specifying the purposes for which the Fund is established certainly includes the use of those funds for the state's attorney's continuing legal education.

However, we must also point out that North Dakota Century Code Section 11-16-10 governs the manner in which charges against the Contingent Fund may be incurred. This section provides:

11-16-10. USE OF THE STATE'S ATTORNEY'S CONTINGENT FUND. The state's attorney, with the consent and approval of a district judge in and for his county, may incur expenses in securing evidence and investigating criminal cases, so far as is necessary, to the amount annually appropriated by the board of county commissioners to the state's attorney's contingent fund.

It will be noted that this section is narrower in the purposes for which contingent funds may be used, providing only that the fund may be used for securing evidence and investigating criminal cases and no mention being made of the furtherance of justice. It thus appears that the legislature has required the board of county commissioners in each county to establish a Contingent Fund for broader purposes than it may actually be used. Because we do not believe that such an anomalous result could have been intended by the Legislative Assembly and because we believe these sections, when read together, to be unclear in their meaning, we resort to the history of these sections to determine the Legislature's intention in their enactment.

As between Section 11-16-09 and 11-16-10, it is clear from the history of these two sections that Section 11-16-09 is the most recent to be amended. A further comparison of the law enacted by the legislature in 1927 and the law enacted by the legislature in 1969 may be made. The amendments made in 1927 provided as follows:

<3382. The County Commissioners of each county in this State are hereby authorized and directed to set apart at their first meeting in January of each year, from any funds in the County Treasury not specifically appropriated or set aside for any other purpose, a sum of money of not less than \$500.00, and not more than \$1,000.00 in each county having a population of 10,000 or less, according to the last official census; the sum of not less than \$1,000.00 nor more than \$1,500.00 in each county having a population of not less than 10,000 and not more than 20,000; and the sum of not less than \$1,500.00 and not more than \$2,000.00 in each county having a population of more than 20,000, to be used by the State's Attorney of such county

as a contingent fund for the purpose of defraying such necessary expenses as are not otherwise provided for in securing evidence in the investigation of criminal cases.

The effect of the amendments contained in Chapter 136 of the Session Laws of 1969, now codified as Section 11-16-09, was to make the section more understandable by breaking down the provisions of Section 3382 of the Compiled Laws into three subsections. The effect was also to add to the purpose of the establishment of the Contingency Fund for the purpose of "furthering justice."

By a comparison of these amendments it can be seen that the purposes of the 1969 amendments to the Contingent Fund law was to broaden the purposes for which the fund could be used. Unfortunately, no similar change was made to the language of Section 11-16-10, which remained in the old form. Given the history outlined above, however, it can be seen that the Legislative Assembly indeed intended a use of the Fund moneys for broader purposes than the mere technical exercise of "securing evidence and investigating criminal cases." A broader interpretation of the language of Section 11-16-10 to include the use of Fund moneys for CLE programs directly contributing to the skills of the state's attorney, in that capacity, is therefore warranted, as such a construction will further justice and is no doubt at least an indirect expense in the securing of evidence and the investigation of criminal cases. A similar result was reached in an opinion by this office dated October 7, 1969, addressed to Mr. Fabian Noack, a copy of which is herewith enclosed.

We must also caution, however, than any use of the Contingent Fund moneys is subject to the consent and approval of a district judge for the county in question. In making such a determination and giving his approval or disapproval, the district judge must, of course, exercise his independent judgment on this question, and the opinion of this office is therefore not conclusive.

In summary and in direct response to your question, we believe that the moneys of the State's Attorney's Contingent Fund may be used by the state's attorney for educational programs which directly support the state's attorney's role as legal representative of this state and which would qualify for continuing legal education credits.

Sincerely,

ALLEN I. OLSON

Attorney General