

LETTER OPINION
80-119

March 12, 1980 (OPINION)

Mr. H. F. Gierke III
McKenzie County State's Attorney
P. O. Drawer 528
Watford City, ND 58854

Dear Mr. Gierke:

This is in response to your letter of February 19, 1980, wherein you state the following facts:

During the 1979 legislative session, the North Dakota mental health commitment law was changed and revised, thereby assuming its current form in chapter 25-03.1 of the Century Code. Section 25-03.1-14 also appears to have changed the previous question of the compensation of the state's attorneys for their representation of the petitioner in these proceedings. From a literal reading of the section, it would appear that the county of the residence of the respondent would pay the state's attorney for his time and expense in these hearings. Previously, the county would only pay for the time and expense of the state's attorney if the county of the respondent (i.e., McKenzie) and the county where the proceedings were initiated (i.e., Jamestown) were different. Chapter 25-03.1 also now empowers the county justice to preside over mental health commitment proceedings.

I would request an opinion from your office on the following question:

Does section 25-03.1 require the county to pay the cost of the state's attorney in a reasonable amount based upon time and expense where the proceedings are initiated in the county justice court and the respondent is a resident of the same county as the state's attorney and county justice?

Section 25-03.1-14 of the North Dakota Century Code states as follows:

25-03.1-14. DUTY OF STATE'S ATTORNEY. The state's attorney for the county in which proceedings under this chapter are initiated shall represent the state in court proceedings and hearings conducted under section 25-03.1-19. The county of residence of the respondent shall bear the cost of the state's attorney in such proceeding in a reasonable amount based upon time and expenses.

It appears that the specific language of section 25-03.1-14 clearly requires the county of residence of the respondent to bear the cost of the state's attorney in such proceedings. This statute does not appear to be ambiguous. While a case could possibly be made that the purpose of section 25-03.1-14 is to cause the county of residence of

the respondent to bear the cost of the state's attorney in such proceedings where the county of the commitment proceedings and the county of residence of the respondent is not one and the same, to do so may amount to an unwarranted extension of the intent of the law. When a specific law is clear on its face, it may not be ignored under the pretext of pursuing its spirit.

Accordingly, it is our opinion that the proper interpretation of section 25-03.1-14 is that the county of residence of the respondent shall bear the costs of the state's attorney in commitment proceedings.

Sincerely,

ALLEN I. OLSON

Attorney General