

Date Issued: April 15, 1981 (AGO 81-40)

Requested by: Richard C. Wilkes,  
Ward County Assistant State's Attorney

- QUESTIONS PRESENTED -

I.

Whether an elected county state's attorney must receive prior approval from the board of county commissioners before traveling out-of-state for continuing legal education purposes related to the office of state's attorney.

II.

Whether the board of county commissioners, by board resolution, has the authority to impose upon a state's attorney, when an appropriation for travel has been included in the state's attorney's budget, prior approval requirements for out-of-state travel.

- ATTORNEY GENERAL'S OPINION -

I.

It is my opinion that an elected county state's attorney does not have to receive prior approval from the board of county commissioners out-of-state travel for continuing legal education purposes related to his office under section 11-10-16 of the North Dakota Century Code.

II.

It is my further opinion that the board of county commissioners, by board resolution, does not have the authority to impose upon a state's attorney prior approval requirements for out-of-state travel.

- ANALYSIS -

I.

Section 11-10-16, N.D.C.C., clearly reflects that a county official does not need prior approval for out-of-state travel before an expense voucher can be submitted to the board of county commissioners. Section 11-10-16, N.D.C.C., states as follows:

**OFFICIAL MUST FILE STATEMENT TO CLAIM MILEAGE.** Before an allowance for mileage or travel expense may be paid by a county, the county official or his deputy for whose travel the same is claimed shall file with the county auditor an itemized statement verified by his affidavit showing the number of miles traveled, the mode of travel, the days

of traveling, the purpose of travel, and the destination. The statement and affidavit shall be submitted to the board of county commissioners and the claim shall be approved by the board before it shall be allowed or paid.

The amount of money that shall be allowed and paid for mileage and travel expenses is governed by section 11-10-15, N.D.C.C., which states:

Unless otherwise provided by the laws of this state, every county official, whether elective or appointive, and every deputy of a county official, entitled by law to travel or mileage expense, shall be allowed or paid the same amounts allowed state officers and employees under section 54-06-09 for each mile 1.61 kilometers actually and necessarily traveled in the performance of official duties.

Out-of-state travel in the performance of official duties, for example, clearly encompasses a state's attorney's travel for attendance at a trial advocacy course. To be eligible to the office of state's attorney, one must be licensed as an attorney in the state. Enge v. Cass, 148 N.W. 607 (N.D. 1914). The Rules of the State Bar Association of North Dakota for Continuing Professional Education require mandatory continuing legal education of forty-five hours of approved coursework during a three-year period. See Rule 3. Rule 4 sets forth the penalty for failure to satisfy educational requirements which can result in an attorney's suspension of the right to practice law.

## II.

A board of county commissioners does not have the authority to impose prior approval for out-of-state travel expenses by a board resolution. This would be contrary to section 11-23-09, N.D.C.C., which states in part:

The expenditure of money by a county shall be in accordance with the annual appropriations of the board of county commissioners. All bills in connection with any public office or undertaking shall be approved by the official or officials in charge of the office or undertaking before being allowed by the board of county commissioners. . . . (Emphasis supplied).

Once a budget for a county officer, which includes an appropriation for travel, has been approved by the board of county commissioners the approval for a particular travel expenditure is to be made by the officer in charge of the office and not by the board of county commissioners. Once the travel expense has been submitted to the board of county commissioners according to section 11-10-16, N.D.C.C., the claim should then be allowed by the board, unless lawful evidence exists justifying the failure to allow such travel claim.

- EFFECT -

This opinion is issued pursuant to section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the questions presented are decided by the courts.

ROBERT O. WEFALD  
Attorney General

Prepared by: DeNae H. M. Kautzmann  
Assistant Attorney General