

Office of the Attorney General
State of North Dakota

Opinion No. 81-95

Date Issued: August 31, 1981

Requested by: Joseph Dietchman
Benson County State's Attorney

--QUESTION PRESENTED--

Whether Section 11-10-20 of the North Dakota Century Code requires the board of county commissioners of each county to fund office furnishings and a secretary for the state's attorney.

--ATTORNEY GENERAL'S OPINION--

It is my opinion that the board of county commissioners must provide necessary office furniture, equipment and supplies, as well as secretarial services to the extent that such furnishings and secretarial services are incidental to that office and are necessary to carry out the duties of the office.

--ANALYSIS--

Section 11-10-20, N.D.C.C., provides that:

The board of county commissioners shall provide a courtroom and jail, and shall provide offices in the courthouse of the county for the sheriff, county treasurer, register of deeds, auditor, clerk of district court, state's attorney, county judge, county superintendent of schools and any other officer who has charge of public records.

Section 11-10-11, N.D.C.C., provides, in part, that 'the board of county commissioners upon written recommendation and approval of the state's attorney may appoint one or more assistant state's attorneys or clerks and fix their compensation in the same manner as in the case of the deputies and clerks in other county offices.' It is the responsibility of the Board of County Commissioners to provide furnishings for county offices. Section 11-11-14(9), N.D.C.C., states that the board of county commissioners shall have the power 'to furnish to the county officers the necessary telephone, postage, telephone and telegraph tolls, and all other things necessary and incidental to the performance of the duties of their respective offices to be paid out of the county treasury.'

While the sections of law relating to the appointment and salary of deputies and clerks and to the powers of the county commissioner to provide things necessary and

incidental to the performance of the duties of county officials are discretionary with the board of county commissioners, that discretion must be exercised in a reasonable manner. It is my opinion that in the reasonable exercise of their discretion, the mandate that county commissions must provide offices for county officials, including the office of state's attorney, necessarily carries with it the requirement that those offices be appropriately furnished at a necessary functional level, including all clerical assistance necessary and incidental to the performance of the duties of that county office.

The determination of that furnishing and support staff level must ultimately be made by the board of county commissioners, but only after a careful examination of the facts and full consultation with the state's attorney.

The state's attorney of each county is responsible for the faithful review, interpretation or enforcement of over 21,000 statutes comprising the North Dakota Century Code. Of that number, over 2,300 statutes alone were affected by the 1981 Legislative assembly. This does not include the myriad of federal laws, and rules that impact upon the county, its government and its citizens.

As the prosecutor within the county, as chief legal advisor to the county, and as a quasi-judicial officer of the courts of this state, the state's attorney requires all reasonable financial support necessary to perform the difficult and technically complicated legal tasks incumbent upon that office. Any denial of requested clerical equipment or library support by the board of county commissioners should be for clear and convincing reasons. Of course, budgetary constraints faced by the county must be shared by all county office holders, including the state's attorney.

--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 question presented is decided by the courts.

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Attorney General

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