

Date Issued: June 21, 1983 (AGO 83-24)

Requested by: Orrin B. Lovell, Golden Valley State's Attorney

- QUESTIONS PRESENTED -

I.

Whether a county commissioner may claim an expense for meals connected with attendance at a county commission board meeting held away from the commissioner's living and working residence.

II.

Whether the term "working" in section 44-08-04 of the North Dakota Century Code refers to the work performed by a county commissioner in discharging public duties.

- ATTORNEY GENERAL'S OPINION -

I.

It is my opinion that a county commissioner may claim an expense for meals connected with attendance at a county commission board meeting held away from the commissioner's living and working residence.

II.

It is my further opinion that the term "working" as used in section 44-08-04, N.D.C.C., does not refer to the work performed by a county commissioner in discharging his public duties.

- ANALYSIS -

I.

Section 44-08-04, N.D.C.C., provides in relevant part, as follows:

44-08-04. EXPENSE ACCOUNT - AMOUNT ALLOWED - VERIFICATION. Except as provided in section 44-08-04.1, each elective or appointive officer, employee, representative or agent of this state, or of any of its subdivisions, agencies, bureaus, boards, or commissions, may make claim for meals and lodging while engaged within this state in the discharge of a public duty away from his normal working and living residence for all or any part of any quarter of a day. Claims may also be made for meals which are included as part of a registration fee for a conference, seminar, or other meeting, and for meals attended at the request of and on behalf of the state or any of its subdivisions, agencies, bureaus, boards, or commissions. Such claims shall be allowed even if the city

at which such meeting is held or meal is provided is the claimant's working and living residence. . . . (Emphasis supplied).

It is clear that a board of county commissioners qualifies as a board of a state political subdivision and that a county commissioner in attendance at a board meeting held pursuant to section 11-11-05, N.D.C.C., is discharging a public duty. However, section 44-08-04, N.D.C.C., is unclear as to when a county commissioner's attendance at a county commission board meeting constitutes being "away from his normal working and living residence" so as to allow such commissioner to claim an expense for meals.

The use of the conjunctive term "and" in the above-quoted portion of section 44-08-04, N.D.C.C., clearly reveals that a county commissioner must both live and work away from the location of the board meeting before becoming entitled to claim an expense for meals connected with attendance at the board meeting.

In order to determine whether a county commissioner is actually living and working away from the place at which he or she is discharging a public duty, the boundaries of such location must be defined. Section 11-11-05, N.D.C.C., provides in pertinent part, as follows:

11-11-05. MEETINGS OF BOARD - TIME AND PLACE. The board of county commissioners shall meet and hold sessions for the transaction of business at the courthouse, or at the usual place of holding court. . . .

Section 11-11-05, N.D.C.C., requires boards of county commissioners to hold meetings at the county courthouse or at the usual place of holding court which in both instances will normally be the county seat. Therefore, the appropriate boundary to be applied to determine whether a county commissioner is entitled to a meal allowance connected with his or her attendance at a county commission's board meeting is the city limits wherein such courthouse is located. Only if a county commissioner both lives and works outside of the city limits of the city where the board meeting is held will a claim for meal expenses be allowed pursuant to section 44-08-04, N.D.C.C.

## II.

Words in a statute are to be construed in their ordinary and usual sense. Section 1-02-02, N.D.C.C. The term "working" modifies the term "residence" in section 44-08-04, N.D.C.C., and is further modified by the word "normal." The term "normal" is synonymous with words such as "regular," "standard," or "typical." American Heritage Dictionary (New College Edition, 1981). Usually, a county commissioner devotes the majority of his or her time to noncommissioner business ventures or employment with the discharge of duties as a commissioner involving substantially less time. Therefore, "normal working . . . residence" as used in section 44-08-04, N.D.C.C., and as applied to the discharge of a county commissioner's duties, refers to the location of work where a commissioner performs his or her noncommission related work.

- 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.

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