

Date Issued: February 8, 1984 (AGO 84-12)

Requested by: Robert W. Peterson
State Auditor

- QUESTION PRESENTED -

Whether a board of county commissioners may provide reimbursement, pursuant to section 11-11-14(9) of the North Dakota Century Code, for travel expenses incurred by county officials and employees in excess of the reimbursement provided for by section 54-06-09, N.D.C.C.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that a board of county commissioners may not provide reimbursement, pursuant to section 11-11-14(9), N.D.C.C., for travel expenses incurred by county officials and employees in excess of the reimbursement provided for by section 54-06-09, N.D.C.C.

- ANALYSIS -

Section 11-10-15, N.D.C.C., provides as follows:

11-10-15. MILEAGE OF OFFICIALS. 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.

Section 54-06-09, N.D.C.C., provides, in part, as follows:

54-06-09. MILEAGE AND TRAVEL EXPENSE OF STATE OFFICERS AND EMPLOYEES. State officials, whether elective or appointive, and their deputies, assistants, and clerks, or other state employees, entitled by law to be reimbursed for mileage or travel expense, shall be allowed and paid for mileage and travel expense the following amounts:

1. The sum of twenty cents per mile >1.61 kilometers! for each mile >1.61 kilometers! actually and necessarily traveled in the performance of official duty when such travel is by motor vehicle. The sum of thirty cents per mile >1.61 kilometers! for each mile >1.61 kilometers! actually and necessarily traveled in the performance of official duty when such travel is by private airplane. . . .

Section 11-11-14(9), N.D.C.C., provides:

11-11-14. POWERS OF BOARD OF COUNTY COMMISSIONERS. The board of county commissioners shall have the following powers:

* * *

9. 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.

In order to determine whether the language contained in section 11-11-14(9), N.D.C.C., is in conflict with or controls that found in sections 11-10-15 and 54-06-09, N.D.C.C., we must look to the rules of interpretation contained in chapter 1-02, N.D.C.C. Section 1-02-02, N.D.C.C., provides that words used in any statute are to be understood in their ordinary sense unless a contrary intention plainly appears. Section 1-02-05, N.D.C.C., provides that when the wording of a statute is clear and free of ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.

Finally, section 1-02-07, N.D.C.C., provides as follows:

1-02-07. PARTICULAR CONTROLS GENERAL. Whenever a general provision in a statute shall be in conflict with a special provision in the same or in another statute, the two shall be construed, if possible, so that effect may be given to both provisions, but if the conflict between the two provisions is irreconcilable the special provision shall prevail and shall be construed as an exception to the general provision, unless the general provision shall be enacted later and it shall be the manifest legislative intent that such general provision shall prevail.

It is my opinion that the language contained in sections 11-10-15, 11-11-14(9), and 54-06-09, N.D.C.C., when understood in its ordinary sense, is clear and free from ambiguity. It is my further opinion that the provisions of sections 11-10-15 and 54-06-09, N.D.C.C., are more specific than those of section 11-11-14(9), N.D.C.C., and are therefore controlling in the event of a conflict. Therefore, a board of county commissioners may not provide reimbursement for travel expenses by county officials and employees in excess of the reimbursement provided for by sections 11-10-15 and 54-06-09, N.D.C.C.

- 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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