

**OPINION**  
**46-166**

December 19, 1946           (OPINION)

INSANITY BOARD

RE: Per Diem of Members

I acknowledge your letter of December 17, 1946, in which you seek an opinion of this office as to the construction of section 25-0315 of the North Dakota Revised Code of 1943. I assume from your letter that you are a regularly appointed member of the insanity board of McLean County.

Under section 25 0301, the board of county commissioners may appoint a reputable practicing attorney for a two-year period as a member of the insanity board.

Section 25-0315 of the North Dakota Revised Code of 1943, insofar as pertinent to your question, is as follows:

Each member of the insanity board, except the county judge, and the state's attorney while acting as chairman of the board if he is not already a member thereof, shall be allowed five dollars per day for the time actually employed in the duties of his office, \* \* \*."

It seems plain under the above quoted portion of the statute that it was the intention of the lawmakers to pay per diem to each member of the insanity board of any county, except the county judge and the state's attorney. They are both on a regular salary. If they spend time in the duties of the insanity board they are paid for that time as a part of their monthly salary. If the state's attorney were allowed the per diem provided by the statute he would, during the time spent as a member of the insanity board, be drawing double compensation. It appears that the statute provides for compensation to those members of the insanity board who are not already on a salary paid by the county.

It is, therefore, the opinion of this office that when a state's attorney is appointed as a member of the insanity board of a county he is not entitled to the \$5.00 per diem pay provided by section 25-0315 of the North Dakota Revised Code, and the language above quoted would so indicate.

NELS G. JOHNSON

Attorney General