

**OPINION
59-229**

April 15, 1959 (OPINION)

OFFICES AND OFFICERS

RE: Miscellaneous Provisions - Expense Account - Lodging Expenses

This is in reply to your request for an opinion whether or not it is proper to split or divide the charge for lodging by charging one-half of the room to one day's expense and one-half to the next succeeding day's expense.

The question comes under section 44-0804, 1957 Supplement to the North Dakota Revised Code of 1943. The material portion of this section states;

No elective officer nor any appointive officer, employee, . . . of this state, or of any of its subdivisions shall make claim upon any public fund for any sum in excess of eight dollars for any one day for actual expenses of meals and lodging" (Underscoring ours).

The term "lodging" implies a temporary abode or sleeping quarters. Normally such temporary abode or sleeping quarters is on a "night" basis; the "night" as such begins one day and ends on another. When such time begins and ends is open to much argument and can vary with each individual depending on personal habits, etc., and can also vary from time to time depending upon the time year.

The statute refers to "one day" which has many definitions, but as used in the statute it means a calendar day. The word "day" when not qualified means a calendar day (85 N.E.2d. 766 Words and Phrases). A calendar day includes the time from midnight to midnight (270 NYS 273 Words and Phrases). Also normal meaning of day is period of time during which earth makes one revolution on its axis, and day begins at midnight and ends the following midnight, twenty-four hours later (95 A.2d. 625).

The above would apply to the term "day" as used in the statute and would be a twenty-four-hour period beginning at midnight and ending at midnight the following night.

Thus having established the term "day" we are still confronted with what constitutes lodging "for any one day." Custom and usage must be considered. Generally the expense for lodging is incurred at the time the room or sleeping quarters are rented or taken. This usually coincides with the time when the occupants register. This process or transaction takes place before the room or quarters are occupied. The expense is considered part of the day in which the room began to be occupied. Even though it is found that some individuals will check into a room after midnight, custom and usage still consider the occupancy of that room as part of the preceding day. For example, if a person would check into a hotel room one minute after midnight on the second day of March, it would still be considered as beginning

March first.

The statute referring to actual expense for any one day would therefore have to include the lodging needed at the end of that day.

The custom and usage must be given considerable weight and the receipts furnished by the establishment must be given great weight as to when the expense was incurred and for which day.

In this connection it must also be recognized that a room rented for the night is not actually rented for a day or for a twenty-four-hour period. Invariably the checking out time is some time early in the afternoon. Thus, having considered a night's lodging to be part of the day's expense in the night which it began we must conclude that the lodging expense must be charged to the day in which the night began. For example a night's lodging of March first and second would by custom and usage be charged to March first.

It is, of course, realized that exceptional circumstances will bring about unusual results. For example a person eating his evening meal one minute after midnight, should that be charged to the previous day or to the day in which the meal was actually consumed? In this instance it would be fair and just to allow the individual to charge his meal to the past day, especially if he had not yet partaken of his evening meal (third meal).

The state examiner's office being charged with the duty of examining various records of various state offices and political subdivisions, his rule must be given considerable weight, especially where supported by logic. Usage and custom play a significant role in such matters. The state examiner has followed the rule that lodging cannot be split. Such practice and procedure has generally been recognized and is considered the rule.

Therefore, it is our opinion that the night's lodging should not be split into two days unless the expense actually was incurred otherwise and the receipts so reflect.

LESLIE R. BURGUM

Attorney General