

N.D.A.G. Letter to Wold (Nov. 28, 1989)

November 28, 1989

Mr. James W. Wold
Griggs County State's Attorney
Box 541
Cooperstown, ND 58425

Dear Mr. Wold:

Thank you for your November 3, 1989, letter in which you have made inquiries concerning the payment of transcript fees pursuant to N.D.C.C. § 31-01-16. You state that the Northeast Central Judicial District Court Administrator construes the term "expenses" in N.D.C.C. § 31-01-16 to apply to all prosecution district court expenses.

That section now provides:

31-01-16. Compensation and mileage and travel expense of witness
-- County to pay fees except for district court fees in criminal action. A witness in a civil or criminal case is entitled to receive:

1. A sum of twenty-five dollars for each day necessarily in attendance before the district or county court or before any other court, board, or tribunal, except municipal court.
2. A sum for mileage and travel expense reimbursement equal to the reimbursement rates provided for state employees in sections 44-08-04 and 54-06-09.

In all criminal cases such witness fees and expenses on the part of the state must be paid out of the county treasury of the proper county except that in district court cases the attorney general shall pay prosecution witness fees and expenses, and the supreme court shall pay other witness fees for indigents and expenses. Prisoners may not be compensated as witnesses under this section.

I have had an opportunity to review legislative enactments existing prior to the current N.D.C.C. § 31-01-16. Based upon these prior enactments and the existing language of N.D.C.C. § 31-01-16, I conclude that the term "expenses" relates to the mileage and travel expense reimbursement expenses as set forth in subsection 2 of N.D.C.C. § 31-01-16. Early statutory provisions on this subject matter authorized the payments of two amounts to a witness; a witness fee and a mileage fee. Section 3535 of the C. L. 1913 provided:

Sec. 3535. Witnesses are entitled to receive for each day's attendance before the district court, or before any other court, board or tribunal, in all civil and criminal cases, the sum of two dollars, and for each mile actually traveled, one way, ten cents: Provided, that in all criminal cases witnesses' fees on the part of the state shall be paid out of the county treasury of the proper county."

Later amendments to N.D.C.C. § 31-01-16 increased the witness fee for each day's attendance and extended the mileage payment to each mile actually traveled each way, to and from court.

In 1975, the Legislative Assembly deleted the specific ten cent mileage payment in favor of mileage and travel expense reimbursements equal to the rates provided for state employees in N.D.C.C. §§ 44-08-04 and 54-06-09. Amendments subsequent to 1975 related to the increase of witness fees for attendance at trial or hearing and shifted the funding source of district court fees payable by N.D.C.C. § 31-01-16 to the supreme court or the Office of Attorney General.

An examination of this line of enactments shows a long history of legislative intent to pay witness fees for attendance at a trial or hearing and to reimburse such witness for travel and mileage expenses. Reference is made in the last paragraph specifically to these two identifiable expenses by authorizing payment out of either the county or the state treasury in all criminal cases of "such witness fees and expenses" incurred on the part of the state. The operative word "such" refers specifically to the enumerated fees and expenses set forth in N.D.C.C. § 31-01-16, namely, an attendance fee and mileage and travel expense reimbursements paid in accordance with N.D.C.C. §§ 48-08-04 and 54-06-09.

Prior to the 1989 Legislative Session, N.D.C.C. § 31-01-16 required that "district court witness fees and expenses shall be paid by the state." This language was included in N.D.C.C. § 31-01-16 as part of the comprehensive court reorganization bill adopted by the 1981 Legislative Assembly. See, 1981 N.D. Sess. Laws ch. 320, 77. This comprehensive act required the state to pay substantially all salary and expenses for the district courts.

Also included within this 1981 act was an amendment to N.D.C.C. § 27-06-08 pertaining to fees for transcripts. under the 1981 revision compensation for the transcript was to be paid by the party requesting the transcript or by the county or state as ordered by the court when the transcript was ordered prepared by the judge. See, 1981 N.D. Sess. Laws ch. 320, 52.

The 1989 amendments to N.D.C.C. § 31-01-16 changed the funding source to the Office of Attorney General solely for witness fees and mileage and travel expenses incurred by witnesses at district court proceedings. N.D.C.C. § 27-06-08 was not amended by the 1989 Legislative Session and no reference is made to those expenses in N.D.C.C. § 31-01-16.

In summary, it is my conclusion that N.D.C.C. § 31-01-16 has application only to

specifically enumerated witness fees and witness expenses subject to the legislative payment limitation and that this office is required to pay only such enumerated expenses incurred in proceedings before the district courts.

I trust that I have adequately responded to your inquiry.

Sincerely,

Nicholas J. Spaeth

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