

N.D.A.G. Letter to Diemert (Feb. 14, 1990)

February 14, 1990

Mr. Daniel G. Diemert
Dickey County State's Attorney
P.O. Box 39
Ellendale, ND 58436-0039

RE: Sheriff Mileage

Dear Mr. Diemert:

Thank you for your January 18, 1990, letter in which you have inquired whether a sheriff may retain mileage payments received for the service of civil process or whether such payments must be deposited with the county treasurer. You have also inquired as to whether the county commission may require a sheriff to turn over such mileage payments to the county treasurer along with other fees collected for providing service of civil process.

The conclusion set forth in your letter to me that mileage moneys received for service of civil process are not "fees" within the specific provisions of N.D.C.C. § 11-15-07 is correct.

North Dakota law specifically provides for the reimbursement of mileage expense to a sheriff or deputy for miles traveled in the performance of official duties. N.D.C.C. § 11-15-12 provides:

11-15-12. Sheriff's mileage. A sheriff or deputy, for each mile [1.6 kilometers] actually and necessarily traveled within this state in the performance of official duties, is entitled to reimbursement for mileage expenses in accordance with section 11-10-15.

Payment of mileage expenses to a sheriff or deputy is subject to the payment limitations of N.D.C.C. § 11-10-15 and the procedures for obtaining mileage reimbursement in N.D.C.C. § 11-10-16. These sections provide:

11-10-15. Mileage of officials and employees. Unless otherwise provided by the laws of this state, every county official, whether elective or appointive, every deputy of a county official, and any county employee entitled by law to travel or mileage expense, is entitled to mileage expenses of at least the amount 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.

11-10-16. Statement to claim mileage. Before an allowance for mileage or travel expense may be paid by a county, the person for whose travel the claim is made shall file with the county auditor an itemized statement verified by affidavit showing the number of miles traveled, the mode of travel, the days of traveling, the purpose of the travel, and the destination. Before a claim for mileage is allowed or paid the claimant shall file the statement and affidavit with the board of county commissioners which shall decide whether to allow the claim.

The mileage reimbursement may be paid only after an itemized statement is filed as required by N.D.C.C. § 11-10-16 and upon approval of the board of county commissioners. In light of these statutory provisions, retention of mileage moneys by a sheriff or deputy may avoid the specific statutory requirements and procedures set forth in N.D.C.C. § 11-10-16.

This office has previously issued opinions concerning whether the county fees under N.D.C.C. § 11-15-07 and the sheriff's commission which may be charged pursuant to N.D.C.C. § 11-15-08 are county moneys and must be paid to the county treasurer. Those opinions conclude that the fees and commission are county moneys. 1954-56 Op. Att'y Gen. 108 (1955); 1966-68 Op. Att'y Gen. 50 (1967). I have enclosed copies for your information. In the February 2, 1955, opinion, it was stated:

It is the opinion of this office that all such moneys collected by the sheriff in his official capacity must be accounted for and turned over to the county. This includes the commissions collected by the sheriff on execution sales and in all other matters where he acts in his official capacity.

(Emphasis supplied.) 1954-56 Op. Att'y Gen. 108 (1955).

In addition, in a letter to Towner County Sheriff Howard Soderberg dated October 13, 1983, Deputy Attorney General Calvin Rolfson recommended that all mileage and fees be turned into the county auditor and vouchered by the officers. Deputy Attorney General Rolfson found no authority for a sheriff to withhold any funds, including mileage reimbursement, received by him for service of papers.

N.D.C.C. § 11-15-04 requires a sheriff to execute all process and orders which are regular on their face and are issued by competent authority. N.D.C.C. § 11-15-03(8) imposes a duty upon the sheriff to serve all process or notices in the manner prescribed by law. N.D.C.C. § 11-15-06 requires a sheriff to serve and execute any summons, order, or judgment.

These provisions of law impose a duty and responsibility upon the sheriff to serve civil process in the sheriff's official capacity. N.D.C.C. § 11-10-14 requires all fees and compensation received by any official for act or service rendered in that official's official capacity to be paid to the county treasurer. That section provides:

11-10-14. Fees received by county officers turned over to county treasurer. The salaries fixed by this chapter shall be full compensation for all county officials, deputies, clerks, and assistants, respectively, and all fees and compensation received by any official, deputy, clerk, or assistant for any act or service rendered in his official capacity shall be accounted for and paid over monthly to the county treasurer and be credited to the general fund of said county, except that such official, deputy, clerk, and assistant shall be entitled to retain such fees as now are allowed to him and permitted by law or as may be hereafter permitted and allowed.

N.D.C.C. § 11-14-06 requires the county treasurer to receive all moneys belonging to the county, from whatever source they may be derived, and all moneys which are to be paid to the treasurer. Moneys belonging to the county may be paid only on a properly drawn county warrant or in such other manner as provided by law. In addition, N.D. Const. art. X, § 12(2) provides:

2. No bills, claims, accounts, or demands against the state or any county or other political subdivision shall be audited, allowed, and paid until a full itemized statement in writing shall be filed with the officer or officers whose duty it may be to audit the same, and then only upon warrant drawn upon the treasurer of such funds by the proper officer or officers.

All moneys received by the sheriff or the sheriff's deputy in the performance of their official duties are county moneys and must be paid to the county treasurer. A sheriff or deputy may be reimbursed for mileage expenses incurred in the performance of official duties by submitting an itemized voucher. After approval of payment by the board of county commissioners, a county warrant is issued to the sheriff or deputy.

You have also inquired as to whether the county commission may require a sheriff to pay to the treasurer all mileage payments received along with other fees collected for providing service of civil process.

N.D.C.C. § 11-11-11 imposes certain duties upon the board of county commissioners. That section states, in part:

11-11-11. General duties of board of county commissioners. The board of county commissioners:

1. Shall superintend the fiscal affairs of the county.
2. Shall supervise the conduct of the respective county officers.
3. May cause to be audited and verified the accounts of all officers having the custody, management, collection, or disbursement of any moneys belonging to the county or received in their official capacity.

N.D.C.C. § 11-10-17 requires every county officer chargeable with money belonging to the county to make an account and settle with the board of county commissioners. Each officer must pay any balance due the county to the county treasurer. N.D.C.C. § 11-10-18 authorizes imposition of a civil penalty against a person who does not account for the funds.

A county official has a duty to account for the receipt of moneys belonging to the county. The board of county commissioners has the duty to supervise the financial affairs of the county and to cause an accounting to be made of moneys held by public officers. Therefore, the board of county commissioners possesses the authority to establish accounting and deposit procedures for moneys belonging to the county, including those which are received by the sheriff.

I trust that I have adequately responded to your inquiries.

Sincerely,

Nicholas J. Spaeth

cv
Enclosure