

**OPINION
70-146**

March 3, 1970 (OPINION)

Mr. Calvin N. Rolfson
State's Attorney
Pembina County

RE: Courts - Jurors - Mileage

This is in reply to your letter of 20 February 1970 with regard to mileage and per diem of witnesses and jurors pursuant to sections 31-06-16 and 27-09-05 of the North Dakota Century Code, as amended to date.

Said section 27-09-05 of the 1969 Supplement to the North Dakota Century Code provides:

FEES AND MILEAGE FOR JURORS. A juror shall receive:

1. Eight dollars, payable by the county, for each day's attendance in district or county court as a regular or special juror;
2. Four dollars for each day's attendance as a juror in justice court;
3. Four dollars, payable by the county, for each day's attendance at a coroner's inquest; and
4. Traveling expenses, payable by the county, of ten cents per mile for each mile actually and necessarily traveled each way."

Said section 31-01-16 of the North Dakota Century Code provides:

COMPENSATION AND MILEAGE OF WITNESS - COUNTY TO PAY FEES IN CRIMINAL ACTION. A witness in a civil or criminal case is entitled to receive:

1. The sum of six dollars for each day's attendance before the district court or before any other court, board, or tribunal; and
2. The sum of ten cents for each mile actually traveled one way.

In all criminal cases such witness fees and mileage on the part of the state shall be paid out of the county treasury of the proper county."

You ask whether a witness or juror may for attendance in court, by virtue of subpoena or otherwise, receive traveling expenses of ten cents per mile, one way or each way, as the case may be, for each day which that witness or juror is required to present himself to the court. You mention that several of the clerks of court seem to feel

that when a witness or juror is summoned to court pursuant to law he may only receive ten cents per mile for the first day he is summoned, and if he is required to present himself on subsequent days the mileage provision of the sections above referred to does not apply. You state that your office takes issue with that stand and feels that the words "actually traveled" in section 31-01-16 of the North Dakota Century Code and "actually and necessarily traveled" in section 27-09-05 of the North Dakota Century Code mean simply that mileage is not limited to the first day's attendance but to each day which the witness or juror is required to incur traveling expenses in connection with his duties.

You further inform us that often jurors or witnesses subpoenaed live twenty or thirty miles from the county seat where they are required to be in attendance and are required to attend for several days. At the end of the first day they naturally drive home and are therefore required to return the next day. Consequently they incur a great deal of traveling expenses. In that regard you ask would returning to one's home which may be twenty or thirty miles from the county seat, and returning the next day for required service, be considered "miles actually and necessarily traveled" so as to entitle the jurors or witnesses to receive mileage compensation.

You request an opinion concerning the foregoing questions.

We are enclosing herewith Xerox copies of opinions and correspondence of this office previously issued in regard to somewhat similar questions. We hope same will give you some further background material on this general subject.

While there have been relatively recent changes in the monetary provisions of these statutes there has not been a substantive change in the form of the statutes since the days when a twenty or thirty mile trip might constitute, for practical purposes, a full day's travel. In the early days of application of the statute quite obviously a witness or juror who had come twenty to thirty miles to attend at court, for practical reasons, quite obviously would not return home at night after court and return in the morning for a new day's attendance.

At the current date the same compelling practical reasons for not returning home at night after court and returning the next day do not exist. However, the statute remains substantively in the same form as previously. With regard to jurors the statutory provision for travel expenses is for ten cents per mile for each mile actually and necessarily traveled each way. With regard to witnesses the statutory provision for travel expenses is for the sum of ten cents for each mile actually traveled one way. At this point, with regard to jurors, there is no necessity with regard to the trial of the action that the juror return home nightly and the juror is paid adequately for his attendance in court for each day actually attended. With regard to witnesses the mileage is provided for "each mile actually traveled" though this must be considered in the light of the general context of the statute. Quite obviously it is not intended to provide payment for travel on the witnesses own business or pleasure during the hours when he is not specifically required to be in court. Again the witness and juror are paid sufficient per

diem for each day's attendance at court to finance a reasonable hotel bill.

The conclusions of this office previously expressed in opinions and other correspondence do indicate that it is not contemplated in these statutes that the witness or juror will return home each night and collect mileage for a new trip for the next day's attendance at court, though we have also indicated that where an entire panel of jurors was excused for the period of five days the county would be justified in paying the extra mileage thus incurred.

The statutory language in existence in the above quoted provisions does allow considerable latitude in application to particular factual situation. Perhaps more definitive statutory provisions presented to the Legislative Assembly would standardize the procedure to be used in computing these fees and expenses. While we find it very difficult to assume that the statutory provisions contemplate additional mileage for each day's attendance in court, we have long recognized that where they are released for any great length of time, particularly where they are not to be paid for per diem for intervening days' attendance at court, payment of additional mileage is permissible, though again the criteria as to length of time interval to justify such additional mileage is a matter largely within the discretion of the Clerks of Court and District Judges.

HELGI JOHANNESON

Attorney General