

N.D.A.G. Letter to Kusler (June 13, 1985)

June 13, 1985

Honorable James O. Kusler
Senator
District 33
Route 1, Box 160C
Beulah, ND 58523

Dear Senator Kusler:

Thank you for your letter of April 26, 1985, inquiring as to your eligibility for reimbursement of lodging pursuant to N.D.C.C. §54-03-20. I apologize for the delay in responding to you.

House Bill No. 1243 amended N.D.C.C. §54-03-20 and carried with it an emergency clause. As House Bill No. 1243 has been signed by the Governor and filed in the Office of the Secretary of State, it is now an effective law in the State of North Dakota. The relevant portion of this statute with respect to lodging reimbursement is stated as follows:

Each member of the legislative assembly of the State of North Dakota is entitled to receive . . . reimbursement for lodging . . . for each calendar day during the period of any organizational, special or regular session.

In attempting to resolve the problem you are facing as to whether you are entitled for lodging reimbursement, the crucial term appears to be "reimbursement." This term is not defined anywhere in this statute or in N.D.C.C. Title 54. However, N.D.C.C. §1-02-02 states that words used in statutes which are not clearly defined are to be understood in their ordinary sense. The ordinary sense definition of reimbursement involves the paying back of expenses incurred and involves restoration following the payment of expenses.

As we understand the facts involving your recent stay in Bismarck during the 49th Session of the North Dakota Legislative Assembly, you used half of a duplex which you own in the City of Bismarck as your temporary residence.

Specifically, we understand that your wife resides in a portion of the duplex as she is a state employee and works in the City of Bismarck. Apparently, you stayed with your wife in this portion of a duplex during the Session. You did not incur lodging expenses at a motel or through other rental property nor did you utilize a portion of the duplex which otherwise might have been rented to other persons.

Applying the ordinary sense definition of reimbursement to the statute in question, it is our opinion that members of the Legislative Assembly may seek reimbursement for lodging where they incur expenses and require restoration as a result of the payment of such expenses for lodging purposes while attending legislative sessions. In your factual

circumstance, however, you did not incur expenses for lodging as you stayed at a place the expenses of which you would have paid regardless of whether the Legislative Assembly was meeting at that time in Bismarck. As you have apparently incurred no expenses for lodging, you are not entitled to reimbursement pursuant to N.D.C.C. §54-03-20.

This conclusion is in compliance with Article XI, Section 26 of the Constitution of North Dakota which, in part, states as follows:

Payment for necessary expenses [to elected members and officials of the legislative, executive, and judicial branches of government] shall not exceed those allowed for other state employees.

Currently, North Dakota statutes and the Office of Management and Budget policies do not allow a state employee to receive reimbursement for lodging expenses where no lodging expenses were incurred. In other words, where a state employee travels to a place outside of his normal residence and stays with relatives or friends, thus not incurring lodging expenses, that employee is not able to submit a request for reimbursement for such unincurred expenses. To allow a member of the Legislature to receive payment for expenses where a state employee would not be so entitled to a payment would violate Article XI, Section 26 of the Constitution.

I can appreciate the inequities of this situation given the fact that you could have easily rented a place during the session for which you could seek reimbursement. The fact that you resided in property you owned rather than seeking rental property has prevented you from obtaining reimbursement for expenses incurred. Although I am sympathetic, I am unable to ignore the statute in question. To remedy this situation, appropriate changes in statute or in legislative rules need to be obtained.

Sincerely,

Nicholas J. Spaeth

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cc: John Olsrud, Legislative Council