

N.D.A.G. Letter to Elhard (Nov. 12, 1985)

November 12, 1985

Mr. Terry Elhard
McIntosh County State's Attorney
Ashley, ND 58413

Dear Mr. Elhard:

Thank you for your letter of October 25, 1985, requesting an opinion on circumstances involving a dispute between McIntosh board of county commissioners and the McIntosh county sheriff as to the vehicle apparently supplied to the sheriff for official business. From a reading of your letter, it appears that the sheriff uses a patrol car owned by the county to travel to and from work each day. The commissioners desire to charge the sheriff for such commuting mileage or, in the alternative, to order the car to remain at the sheriff's office overnight.

The various North Dakota statutes discussing the duties of the sheriffs and county commissioners of the state are not so specific as to address your questions. However, there are statutes which clearly place the responsibility for the general administration of the affairs of the county with the board of county commissioners. N.D.C.C. §11-11-11(1). Indeed, with respect to property belonging to the county, which apparently is the case with respect to your specific questions, N.D.C.C. §11-11-14(2) does provide authority with the board of county commissioners to make all orders respecting such property of the county. Finally, in 1982 this office issued an opinion recognizing that the sheriff does have authority with respect to the administration of his department but further indicating that the board of county commissioners retains authority with respect to the overall fiscal administration of various county offices, including that of the sheriff. 1982 N.D. Op. Att'y Gen. 108.

As the county commissioners have general supervisory authority over the fiscal affairs and property of the county, it would appear that they do possess the authority to determine the handling and operation of county owned patrol cars. However, where the sheriff is unable to use a county owned patrol car and does travel in the performance of his duties, he is entitled to the mileage provided for in N.D.C.C. §11-10-15.

The final question which you have asked concerns the ability of the county to deduct from the sheriff's salary that amount which it claims it is entitled to as a result of commuting mileage performed in the county owned patrol car. Obviously, this matter involves the ability of the county to set off the salary claim of the sheriff against its own alleged claim for reimbursement for commuting travel.

The statutes do not address this issue with the possible exception of N.D.C.C. §34-14-04.1. This latter statute requires employers to withhold from the compensation due

its employees those amounts required by state or federal law to be withheld. The statute permits the withholding of additional amounts as "authorized in writing by the employees." No other method of withholding is provided by the statute.

Although the applicability of N.D.C.C. §34-14-04.1 to this factual situation is not altogether clear, it would be our suggestion that the board seek other means to collect its claim if that is the board's desire.

Sincerely,

Nicholas J. Spaeth

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