

N.D.A.G. Letter to Wolf (Nov. 15, 1985)

November 15, 1985

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

Dear Mr. Wold:

Thank you for your letter of November 1, 1985, questioning the county's obligation to pay the legal fees of an elected official who engages private legal counsel in his defense against removal proceedings brought pursuant to N.D.C.C. Ch. 44-11.

A similar question occurred earlier this year. Enclosed you will find a copy of the letter we sent to the Morton County state's attorney concerning the obligation of the county, through the office of state's attorney or through outside counsel, to represent county officials who are being sued for official acts. As we concluded in that letter, there are no statutes requiring the county, through the office of state's attorney or through outside counsel, to provide such legal defense. Although the factual situation in your letter does not involve a lawsuit, we believe the same conclusion equally applies given the lack of statutory responsibility placed upon the county to provide such legal representation.

In examining the correspondence between your office and counsel for the sheriff, one notices a significant amount of discussion as to whether the actions of the sheriff were personal or official in nature. We believe this discussion does not answer the primary question as to the county's obligation to pay for counsel fees incurred in the representation of a county officer for acts undertaken by that officer. As stated in the letter to the Morton County state's attorney, there are no statutes requiring a county to undertake such legal representation on behalf of a county officer. Thus, unless there is a statutory obligation placed upon the county, that county is not obligated under North Dakota law to provide for the legal defense of county officials except as provided for in N.D.C.C. §§ 44-08-11, 32-12.1-04.

Therefore, based upon our earlier view on a similar question, we are in agreement with your conclusion that the county is not responsible for the payment of the attorney's fees incurred by the sheriff in his defense of his actions as part of the removal proceedings recently completed.

Sincerely,

Nicholas J. Spaeth

vkk

Enclosure