

N.D.A.G. Letter to Duppler (July 30, 1987)

July 30, 1987

Mr. Alan Duppler
Mercer County State's Attorney
Mercer County Courthouse
Stanton, ND 58571

Dear Mr. Duppler:

Thank you for your letter dated July 7, 1987, in which you inquire as to the Mercer County Jail's policy of requiring work release prisoners to pay a daily lodging rate. You ask whether or not a county sheriff or the board of county commissioners has the authority to institute a jail policy that requires work release prisoners to pay an administrative fee for work release.

Generally, the governing body of each jail, in your case the Mercer County Commission, has the authority to set policies and procedures for operating and maintaining the jail subject to specific statutory and North Dakota Administrative Code provisions. See N.D.C.C. § 12-44.1-04.

N.D.C.C. § 12-44.1-18.1 establishes the authority of the governing body of a city or county to provide for a work release program for inmates. That section provides:

12-44.1-18.1. INMATE WORK RELEASE PROGRAM. The governing body of a city or county, with the concurrence of affected parties, may provide for a work release program for inmates confined in a city or county penal institution. Work projects may include public service and community projects, and may utilize any particular skill or trade of participating inmates. At the discretion of the judge with jurisdiction over a participating inmate, for every eight hours of work by a participating inmate, the inmate's period of confinement shall be reduced by two days. The governing body shall take measures to maintain jail security among participating inmates.

I recognize that the existence of a work release program will be beneficial to a court in developing alternatives to the service of a sentence on "straight time." In addition, I recognize that a work release program may entail additional cost to the governing body which would not be otherwise incurred if the inmate did not participate in the work release program.

The North Dakota Legislature has granted broad authority for the operation and administration of a jail to the governing body which necessarily includes policies and procedures for the operation of a work release program. Based upon this grant of

administrative authority, the governing body of a jail has the authority to impose reasonable fees for the participation in a work release program.

Since N.D.C.C. § 12-44.1-18.1 authorizes the governing body to provide for a work release program, the Mercer County Commission, and not the county sheriff, has the authority to provide for the work release program through the Mercer County Jail.

You should be aware, however, that little guidance is provided as to the exact fee which should be charged.

N.D.C.C. § 12-48.1-03 provides for the use of funds earned on work release by an inmate of the penitentiary or state farm. It is my understanding that the North Dakota State Penitentiary utilizes a percentage of income rather than a flat fee in the plan for the work release program. N.D.C.C. § 12-48.1-03 provides:

12-48.1-03. USE OF FUNDS EARNED ON WORK RELEASE. The plan for the inmate shall provide that any funds earned in outside employment will be used in the following order: for necessary expenses of the inmate, including room and board costs of the institution; court costs or fine; restitution if a part of the sentence; necessary support of dependents; and credited to inmate's personal account to be paid him on release.

In establishing the fee for the work release program, I would suggest that the court or courts which will be allowing persons to participate in the work release program be consulted. In most cases, it would be expected that work release will be granted to an inmate as a result of a court order. Consultation with the court may permit the judge to order the inmate to pay a certain sum of money as expense reimbursement as a condition of participating in the work release program. I would expect, however, that a court may, when imposing this payment requirement, take into consideration the amount of money to be earned by an inmate on work release, the expenses which will be incurred as a result of the work release program, and the support obligations of the inmate to his or her family and dependents. If the charged expenses are unreasonably high, this may deprive persons who may be otherwise authorized to participate in a work release program from actually participating in that program.

When policies and procedures are developed for the operation and maintenance of a work release program, it may be advisable that the governing body consult with, and receive input from, the courts and the jail administrator. This consultation will avoid conflicts between the respective parties and will ensure that a fair and equitable expense schedule will be prepared to meet the interests and needs of all parties concerned.

I hope that this letter has adequately responded to your inquiry .

Sincerely,

Nicholas J. Spaeth

CV