

**OPINION
67-56**

August 9, 1967 (OPINION)

Mr. David E. Nething

Assistant State's Attorney

Stutsman County

RE: Counties - States Attorney - Duties Respecting Public Welfare

This is in reply to your letter of 4 August 1967 with regard to the duties of the state's attorney of the county relative to its public welfare program.

You inform us that your local county board indicated its desire to have either the state's attorney or you advise them relating to certain legal problems, i.e., reviewing memos, answering memos, and letters relating to the problems plus discussion with case workers on the actual status and progress of various matters. Additionally they would prefer to have one of you attend their regular board meetings to discuss certain items that may come before the board needing a legal interpretation.

You therefore request our opinion as to whether or not the type of work requested is that which falls within the scope of the state's attorney's duties or if it is of the nature that should be compensated for an addition to the regular salaries paid.

The basic statutes in this regard would appear to be section 50-01-22 and subsection 9 of section 11-16-01 of the North Dakota Century Code. Said statutory provisions are:

50-01-22. ACTIONS AND PROCEEDINGS - DUTY OF STATE'S ATTORNEYS. All suits and other proceedings arising out of the administration of the laws pertaining to the support of the poor shall be brought by or against the county in its corporate name. Such suits and proceedings, including the service of process, shall be governed by the provisions of this code relating to civil actions and proceedings. The state's attorneys of the several counties in the state shall institute and conduct or defend any and all actions or proceedings that may be instituted under the provisions of this title."

11-16-01. DUTIES OF THE STATE'S ATTORNEY. The attorney is the public prosecutor, and shall:

* * * *

9. Give, when required and without fee, his opinion in writing to the county, district, township, and school district officers on matters relating to the duties of their respective offices;

* * * *."

Where a true county welfare board exists, its actions would be a county function and the state's attorney of the county is necessarily required to furnish the services specified in the above-quoted statutes. Where the welfare board is merely acting as an adjunct of the state welfare board performing in the county, it is not necessarily functioning as a county board, and to that extent the county state's attorney is not involved.

The statutes of course do not require the state's attorney of the county to attend meetings of the welfare board, review its cases, consult with its case workers etc. The county welfare board of course, where functioning as such county board, is entitled to the legal services of the state's attorney within the scope of the above-quoted statutes, though such services might well be limited to consultation by the county welfare board itself with said state's attorney at his office, official written requests for legal opinions on strictly legal questions, and of course institution, conduct and defense of legal actions. Such services as attendance at meetings of welfare board, consultation with its case workers, attendance at its office, and review of its files, cases and correspondence are matters for which the attorney performing same should be compensated.

HELGI JOHANNESON

Attorney General