

OPINION
67-62

April 13, 1967 (OPINION)

Honorable Norbert J. Muggli

District Judge

Dickinson, North Dakota

RE: Courts - Court Reporters - Salaries

This is in response to your letter in which you call our attention to Senate Bill No. 123 of the 1967 Legislative Session, which amends Section 27-06-02 of the 1965 Supplement to the North Dakota Century Code, relating to the salary and expenses of court reporters.

You state that your reporter had reported for the Public Service Commission of the state of North Dakota before he was employed by the District Court. Your specific question is whether or not the months he spent as a court reporter for the Public Service Commission should be computed along with his time spent as a court reporter in your District Court in arriving at his salary.

Senate Bill No. 123 of the Fortieth Legislative Assembly, which amends Section 27-06-02 of the 1965 Supplement to the North Dakota Century Code, provides in part as follows:

Each court reporter who has been employed in North Dakota as a court reporter for five years or more shall receive a salary not to exceed eight thousand, two hundred dollars per annum." (Emphasis supplied.)

It is not quite clear whether the Legislature meant that such services were restricted to the time when the individual was the official court reporter or whether it meant performing services as a court reporter, i.e., services similar to that performed by a court reporter. It does appear clear that the Legislature intended to compensate on the basis of experience. On this assumption we conclude that it was the type of service and the experience which should be the basis for computing the salary. Of course, there is no question that the services had to be in North Dakota.

While the term "court reporter" is not specifically defined, nevertheless the use of the term in Chapter 27-06 leaves no doubt what is meant by such term.

In *Perlman v. Feldman*, 116 Fed. Supp. 106, 111, the court had under consideration the question of taxable costs of a deposition taken and transcribed by a person who was "not the official court reporter." The court concluded that the taking of the testimony and the transcribing of same, which was filed with the court without objections, made the reporter a "court reporter pro hac vice" by implication. The court also briefly discussed the charges that may be made by a court reporter for transcribing proceedings.

From the discussion in the Perlman case it seems that even though a person is not designated as the official court reporter, nevertheless if he took stenographic notes and transcribed them, which transcript was subsequently used as an official transcript of a deposition, he was and is considered a court reporter.

It appears that the Legislature in using the term "court reporter" used it in a descriptive sense to describe the activity performed rather than the official position. Any person who takes stenographic notes and transcribes same at an administrative hearing (reports an administrative hearing) is performing the same function as a court reporter. The transcript so prepared becomes the official transcript and is used by the courts in the event an appeal is taken or reviewed.

The Public Service Commission is an administrative body that conducts such hearings. Frequently in a loose sense and in the common vernacular, the reporter of administrative hearings before the Public Service Commission is referred to as a "court reporter." The obvious inference is that it is a person who is qualified to report the proceedings so that they may be used as the official transcript at subsequent proceedings.

It is therefore our opinion that in computing the five year period, the time a reporter spent in reporting administrative hearings in the state of North Dakota may be included in determining whether or not such person has been employed in North Dakota as a court reporter for five years or more. Thus, any time devoted to reporting administrative hearings, such as the Public Service Commission, may be included in computing the five year period.

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