

**OPINION
67-63**

December 26, 1967 (OPINION)

Mr. Clinton R. Ottmar, State's Attorney

Stutsman County

RE: Courts - Expenditures - Approval by county

This is in reply to your request for an opinion on the following questions:

1. Must the district court judge comply with Section 11-23-01, which requires certain officers to submit budgets to county commissioners on or before a certain date?
2. Can the county commissioners by budget limit the expenditures of the district court?
3. If the answer to Question No. 2 is "no" is the district judge limited to the budget as approved by the county commissioners, or does the judge have authority to make expenditures for such items as mentioned in Sections 11-10-12 of the North Dakota Century Code?

The orderly process of raising revenues and allocating the expenditures thereof demands the use of a budget in one form or another. The county commissioners are charged with the duty and responsibility of superintending the fiscal affairs of the county (Section 11-11-11(1)). To carry out this responsibility the county commissioners have been directed and authorized to audit and verify accounts involving county money. They are also directed to cause the maintenance of accurate records relating to receipts, expenditures, assessments and taxes (Section 11-11-11(3)(4)). They are also required to supervise the conduct of the respective county officers.

While a district judge is not designated as a county officer, under Section 11-10-02 he is an officer who is in charge of an institution, office or undertaking supported wholly or in part by the county or counties within his district, so as to come under the provisions of Section 11-23-01. This is true even though the office of district judge is part of the judicial branch of government as distinguished from county offices being part of the executive or administrative branches of government. We find no constitutional provisions which are not in harmony with this conclusion.

The costs of maintaining and operating a district court fall into two distinct classifications. For sake of brevity and discussion we will call them "trial expenses" and "chamber expenses." Trial expenses embrace those items which are the result of conducting a trial or hearing, such as witness fees, juror fees, mileage, bailiff, courtroom equipment and fixtures, etc., needed to conduct a trial. Chamber expenses embrace such items as office (chambers for the judge and reporter) with the necessary appurtenances and equipment, telephone, library and other similar expenses. The chamber expenses

are usually borne by more than one county, whereas trial expenses are unique to the county in which the trial is held. The counties within the judicial district are usually assigned or allocated to one of the judges of the district for in-chambers work and should share the costs on a proportionate basis for such chamber expenses.

The person who has the necessary information to prepare the budget is the district judge to whom the respective counties were allocated or assigned. The allocation or assignment is an internal process reached either by mutual accord between the judges of the district by specific assignment by the senior district judge. This would require that each judge prepare and submit a budget to each county assigned or allocated to him. From this budget the county commissioners of each county can determine the amount of revenue needed to be raised.

As to trial expenses, the clerk of court is the officer who disburses the funds. Such officer, without question, is a county officer and has the pertinent information needed to prepare a budget. In addition to this, the clerk of court is a part of the executive or the administrative branch of government.

Thus in direct response to your first question, it is our opinion that the district judges should submit a budget to the county commissioners for chamber expenses to the respective counties assigned or allocated to such judge. Such budget is to be submitted and filed in accordance with Section 11-23-01 of the North Dakota Century Code. It is our further opinion that as to trial expenses the clerk of court is to submit a budget to the county in which he or she serves and such budget must be submitted and filed in accordance with Section 11-23-01 of the North Dakota Century Code.

As to Question No. 2, it has been generally recognized that the judiciary is a coordinate branch of government co-equal to the executive and legislative branches of government. The judiciary has specific duties to perform. Its powers must be equal to its duties. The same is true of the legislative and the executive branches of government. The legislative or executive branches of government cannot interfere with the functions of the judicial branch of government any more than the judiciary can interfere with the legislative or executive branches of government. Each must respect the duties and responsibilities of the other. Section 11-11-12 of the North Dakota Century Code provides as follows:

"BOARD OF COUNTY COMMISSIONERS TO PROVIDE COURTS WITH SUPPLIES AND ATTENDANTS. The board of county commissioners shall provide the courts which are held within the county with attendants, fuel, lights, and stationery suitable for the transaction of business. If the board neglects to perform its duty, the county may order the sheriff to do so, and the expense incurred by him in carrying the order into effect, when certified by the court, shall be a county charge."

The above section imposes a duty and responsibility upon the county commissioners to provide the necessities to the district court for operating and maintaining the judiciary, which in this instance is the district court. If the county fails to provide these necessities, the district judge may direct the sheriff to obtain the

necessary material, personnel and equipment to carry out the functions of the judiciary. This means that the county must be given an opportunity to furnish such material, personnel and equipment, and only where the county fails to do so can the judge direct the sheriff to obtain them and require that same be paid by the county. (See *State v. Sullivan*, 137 Pac. 392.)

Under case law, by taking into account the concepts heretofore expressed, the needs for operating and maintaining a district court can best be determined by the district judge concerned with such matters. His decisions in this respect have a presumption of validity and only where the requests or demands are extravagant, arbitrary or unwarranted can such requests or demands be disregarded. As to the basic concept, see *Carlson v. State of Indiana*, 220 N.E.2d. 532. Similar theories were expressed in *People v. Randolph*, 219 N.E.2d. 337, which pertains to attorney fees. A similar conclusion was reached in *Edwards v. Prutzman*, 165 Atl. 255, as pertaining to expert witness fees. A different conclusion was reached in *State v. Becker*, 174 S.W.2d. 181, but in this instance the main question was whether or not the county was required to pay for a court-appointed attorney. The court in this instance merely concluded that the judge in question had the authority to appoint an attorney but that such person was not entitled to be compensated by the county.

The cases dealing with this subject all follow the general theory that the judges concerned have inherent powers to obtain the necessary equipment, material and personnel to conduct the affairs of the judiciary in administering justice. None of the cases reviewed pertain to situations where the county did not have the finances to make the provisions. We must therefore assume that in each instance the county was financially able to pay for the items involved.

The case of *Carlson v. State of Indiana*, supra, suggests that if the budget submitted by the judge is deemed extravagant, arbitrary or unwarranted, it is a matter which could be separately considered and could become a subject for litigation, but it would not authorize the county commissioners to summarily reduce or disallow the budget. It reached its conclusion by saying that control of the purse strings could, in effect, throttle the efforts of the judiciary.

Thus in direct response to your second question, it is our opinion that the budget submitted by the district judge has a presumption of validity and only if it can be established that the budget as submitted is extravagant, arbitrary or unwarranted can such budget be reduced or disregarded. This conclusion, however, is based on the presumption that the county has the capacity to furnish the finances to meet the budget.

As to the third question, the discussions earlier herein have a direct bearing on the answer. Following the usual procedures, a budget is submitted and assuming that the budget is honored, the district judge and the clerk of court are required to stay within such budget, except in such instances where emergencies arise. In instances where an emergency arises and where the county has the finances, it is our opinion that the district judge or the clerk of court is authorized to incur additional expenditures if same are necessary to transact the judicial affairs in administering justice.

It is our further opinion as pertaining to those items mentioned in Section 11-11-12 that the district judge first give the county ample opportunity to obtain the necessary items, and only upon the failure or refusal of the county to do so may the judge direct the sheriff to obtain those necessary items.

It appears quite eminent from the research conducted that reasonableness is a controlling factor, and where the demands are reasonable, we do not believe that reasonable county commissioners will disregard or fail to respect the requests made by the officers referred to herein.

HELGI JOHANNESON

Attorney General