

LETTER OPINION
2001-L-02

February 6, 2001

Mr. James D. Gion
Assistant Grant County State's Attorney
PO Box 196
Carson, ND 58529-0196

Dear Mr. Gion:

Thank you for your letter asking our office to reconsider the issue of who has the final authority to determine whether a proposed settlement agreement should be accepted in a lawsuit initiated by former Grant County State's Attorney Cynthia Feland. You also ask whether a county has the authority to pay legal fees if the court's judgment requires such payment.

The lawsuit initiated by former Grant County State's Attorney Cynthia Feland was brought against specific Grant County commissioners who had allegedly received payments in excess of the salary cap. Marilyn Foss is a special state's attorney who was appointed to prosecute this matter on behalf of Grant County. An offer of settlement has been made. You ask, who has the final authority to determine whether a proposed settlement agreement should be accepted.

Former Attorney General Heidi Heitkamp addressed this issue in a June 28, 2000, Attorney General's opinion. The opinion provides:

State law provides that the county state's attorney is the public prosecutor and shall:

[i]nstitute an action in the name of the county to recover any money paid upon the order of the board of county commissioners without authority of law as salary, fee, or for any other purpose. . .

N.D.C.C. § 11-16-01(13). This action was commenced by the former Grant County State's Attorney to recover money the county commissioners

allegedly paid themselves beyond the salary cap. In such a circumstance, it certainly would seem inappropriate for the county state's attorney to consult with the county commissioners in determining whether an offer of settlement is in the best interests of the county. The more appropriate act is for the county state's attorney to decide whether acceptance of the settlement offer is in the best interests of the county residents.

. . . .

Because this litigation was instituted by the Grant County State's Attorney to recover money allegedly unlawfully paid by the county commissioner's to themselves, it is my opinion that the Grant County Board of Commissioners should not be consulted in determining whether the offer of settlement should be accepted. Because Marilyn Foss is an assistant to the Grant County State's Attorney, Ron Weikum, it is my opinion that whether to accept on behalf of the county any offer of settlement in this litigation rests with the Grant County State's Attorney, Ron Weikum.

At the time of the June 28, 2000, opinion, some of the county commissioners being sued were still sitting on the Grant County commission. Thus, former Attorney General Heidi Heitkamp concluded, "it certainly would seem inappropriate for the county state's attorney to consult with the county commissioners in determining whether an offer of settlement is in the best interests of the county. The more appropriate act is for the county state's attorney to decide whether acceptance of the settlement offer is in the best interests of the county residents." She also determined that "the Grant County Board of Commissioners should not be consulted in determining whether the offer of settlement should be accepted."

It is my opinion that since the county commissioners being sued are no longer on the county commission, it is appropriate to consult the Grant County Commission regarding the offer of settlement. However, it is my further opinion that the final decision regarding acceptance of an offer of settlement should be made by the Grant County State's Attorney, Ron Weikum.

You also ask whether the county has the authority to pay the attorney's fees for the defendants if that is part of the judgment of the court. N.D.C.C. § 11-11-45 states:

When a judgment is obtained against a county, the board of county commissioners, at any time after the expiration of six months from the rendition thereof, may assess and collect, within the tax levy limitation

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prescribed by this code, a sufficient amount of revenue to pay off and discharge the judgment.

This state law gives specific authority to counties to assess and collect a sufficient amount of revenue to pay off and discharge a judgment. Therefore, it is my opinion that N.D.C.C. §11-11-45 provides sufficient legal authority for the county to pay the attorney's fees for the defendants if that is part of the judgment of the court.

Sincerely,

Wayne Stenehjem
Attorney General

las/lk