

N.D.A.G. Letter to Splitt (Jan. 15, 1990)

January 15, 1990

Mr. Ronald G. Splitt
LaMoure County State's Attorney
P.O. Box 216
LaMoure, ND 58458-0216

Dear Mr. Splitt:

Thank you for your January 9, 1990, letter concerning the management of the jury selection process in each county.

N.D.C.C. § 27-09.1-04 requires a Jury Commission to be established in each county to manage the jury selection process. The statute states that the Jury Commission "shall be composed of the clerk of court and a Jury Commissioner appointed for a term of four years by the court." The statute also states that the "jury commissioner shall be reimbursed for travel, subsistence, and other necessary expenses incurred by him in the performance of his duties and shall receive compensation at a per diem rate fixed by the Supreme Court of the state or as provided by law."

In your letter, you indicate there is a question whether the compensation provided by N.D.C.C. § 27-09.1-04 to the Jury Commissioner also includes the clerk of court. You express your opinion that there is no additional compensation for the clerk of court as the statute's literal words provide for compensation only for the Jury Commissioner. You conclude that if the legislature had intended the clerk of court to receive compensation, the legislature would have specifically mentioned the clerk. Because the legislature mentioned only the Jury Commissioner, it must be assumed it did not intend to include the clerk of court.

I am in agreement with your opinion. In enacting N.D.C.C. § 27-09.1-04, the legislature distinguished between the clerk of court and the Jury Commissioner because it named both officials individually in determining the composition of the Jury Commission. However, the legislature named only the Jury Commissioner to receive compensation and reimbursement. The general rule of statutory construction is that the specific mention of one thing implies the exclusion of another thing. In Re Township 143 N., Range 55 W. in Cass County, 183 N.W.2d 520 (N.D. 1971); Juhl v. Well, 116 N.W.2d 625 (N.D. 1962).

Applying the general rule of statutory construction and in light of the legislature's specific mention only of the Jury Commissioner to receive reimbursement and compensation, it is my opinion that the clerk of court is not entitled to additional reimbursement or compensation pursuant to the provisions of N.D.C.C. § 27-09.1-04 when the clerk acts as a member of the Jury Commission.

I hope this information and discussion is helpful to you.

Sincerely,

Nicholas J. Spaeth

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