

OPINION  
77-29

May 16, 1977 (OPINION)

Hon. J. B. Graham, County Justice

Dickey County Courthouse

Ellendale, ND 58436

Dear Judge Graham:

This is in response to your letter of March 24, 1977, wherein you request an opinion of this office relative to payment for costs of juries in those instances where a change of venue may occur, changing the place of trial to an adjoining county. You submit the following situation and expressions in your letter:

I have a problem that confronts me and in looking through the County Justice Statutes, I am unable to find the answer.

What is happening is that over in (named county), defendant's attorneys in criminal actions are filing Affidavits of Prejudice against (named Justice), who transferred to Dickey County to be heard in front of me as County Justice. I would appear that the main reason for this is just a matter of the defendants making it as hard on the State's attorney as possible to prosecute their clients in minor criminal cases such as liquor possession and those kind of cases. Of course, in each case the defendant is asking for jury trial.

The problem that confronts me is who pays for the jury. I think you are very much aware of how the County Commissioners in all of our counties hate to pay out money for jury trials and in particular in County Justice Court in in especially so if it is for a case that didn't even originate in Dickey County.

In checking the County Justice law I, of course, find that 33-03-11 covers Change of Venue in civil and criminal actions in County Justice Court. Then we have 33-12-12 which also sets out Change of Venue and then we go to 33-12-20 which sets forth the manner of drawing a jury and you will note that the last sentence says that the trial shall be conducted in the manner prescribed in Chapter 33-07. We then go to 33-07 and that, of course, sets out deposits for jury but it is to be noted there that this has to do only in a civil action.

My question is: Does Dickey County have to furnish jury trials at their own cost and expense to have a case heard before me as County Justice on a Change of Venue from another County?

I have taken the position that it is not up to Dickey County to furnish jury trial to defendants transferred here on Change of Venue.

I have advised that State's Attorneys of these counties that have had cases transferred here that I would not call a jury to hear these cases until they assured me that the county from where the case was transferred agreed to pay the expenses of trial; that is, the jury expenses.

I would appreciate an opinion from the Attorney General's office as to the proper procedure in this matter.

Initially we would note that Section 33-01-08 of the North Dakota Century Code, as amended, sets forth the criminal jurisdiction of the county justice court, so as to cover those specified crimes "committed in the county for which he is elected or appointed and every other criminal action in which jurisdiction is conferred specially by law". In the instance of your inquiry, it would appear that the question settles on that jurisdiction involving crimes committed within the county. As you have correctly noted, Section 33-12-12 sets forth the provisions for change of venue in criminal actions; Section 33-12-20 setting forth the provisions for drawing of jury and manner of conducting trial. We do not find specific statutes indicating the liability for costs of a jury under those circumstances as may arise when a change of venue is initiated under the provisions of Section 33-12-12, however, we would note that the North Dakota Rules of Criminal Procedure address the question of such costs. Section 1 of the said rules sets forth the scope of application as follows:

Except as otherwise provided by statute and in Rule 54, these Rules govern the practice and procedure in all criminal proceedings in the district courts and, so far as applicable, in all other courts, including prosecutions for violations of municipal ordinances. (Emphasis supplied).

Rule 21 of said rules, relating to transfers from the county or municipality for trial, provides for the payment and collection of costs under subsection c, as follows:

- (c) Proceedings on transfer. When a transfer is ordered, the court shall transmit to the court to which the action or proceeding is transferred all papers in the action or proceeding, or duplicates thereof, and any bail taken, and the prosecution shall continue in that county or municipality. Whenever the place of trial is changed as provided in this Rule, the prosecuting attorney of the county or municipality wherein the action or proceeding was commenced, or any other person appointed to prosecute, shall prosecute the case, and the judge ordering the transfer shall preside at the trial. The action or proceeding, except for the payment and collection of costs, shall be conducted in all respects as if it had been commenced in the court to which it is transferred. (Emphasis supplied).

This rule can leave little question but that the costs of such a jury, impanelled under the circumstances as set forth in Section 33-12-12 of the North Dakota Century Code, are to be paid by the county from which the transfer is made. We would also note the

statement relative to this rule as provided by the Explanatory Note set forth under the rule, as follows:

Finally, Subdivision (c) provides for the payment of costs of the trial to be submitted to the county in which the action was commenced.

A final observation in the matter would be the provisions of Rule 57 which provides as follows:

In all cases not provided for by rule or statute, the court may regulate its practice in any lawful manner not inconsistent with these Rules or any applicable statute.

Accordingly, in line with the opinion expressed by yourself in your letter of inquiry and in view of the foregoing provisions of the North Dakota Century Code and the North Dakota Rules of Criminal Procedure, we are of the opinion that the costs of a jury impanelled pursuant to a change of venue as set forth under Section 33-12-12 of the North Dakota Century Code, as amended, are to be paid for by the county from which the transfer is made and where the proceeding was commenced, and that the same is governed by the provisions hereinbefore set forth.

Sincerely,

ALLEN I. OLSON

Attorney General