

LETTER OPINION
94-L-168

June 17, 1994

Mr. Wayne Solberg
Fargo City Attorney
PO Box 1897
Fargo, ND 58107-1897

Dear Mr. Solberg:

Thank you for your letter inquiring whether the county court may order a transcript to be prepared at state or county expense pursuant to North Dakota Century Code (N.D.C.C.) ? 27-06-06 in criminal proceedings transferred to the county court from municipal court pursuant to N.D.C.C. ? 40-18-15.1.

N.D.C.C. ? 27-07.1-21 provides that the general laws and rules of practice of district courts apply to county courts. N.D.C.C. ? 27-07.1-20 further provides that county judges possess the same power and authority as district court judges in similar actions or proceedings.

N.D.C.C. ? 27-06-06 provides that "[a] judge of a district court in which a criminal action or proceeding has been tried, on his own motion or on application of the defendant or the state's attorney of the county, may order a transcript of the original short hand notes of the action or proceeding, or of any part thereof, to be made by the reporter at state expense whenever there is reasonable cause therefor."

The last sentence of N.D.C.C. ? 27-06-08 relating to the fees paid to court reporters for preparing transcripts provides "[t]he reporters' compensation must be paid by the party requesting the transcript or by the county or state as ordered by the court when the transcript is ordered prepared by the judge at county or state expense."

Reading the above provisions together in light of the 1981 legislative history, it is my opinion that a county court on its own motion or upon the motion of the defendant or the prosecutor may order a transcript

be prepared at the expense of the county whereas a district court may order a transcript prepared in such situations at the expense of the state. The question presented is whether the county court may order a transcript prepared at county expense in criminal proceedings transferred to the county court from municipal court pursuant to N.D.C.C. ? 48-18-15.1.

Previously this office concluded that counties were liable for jury costs as well as the payment of witness fees incurred in a trial in county court resulting from a transfer of a criminal proceeding from municipal court pursuant to N.D.C.C. ? 40-18-15.1. 1987 N.D. Op. Att'y Gen. 42; Letter from Attorney General Nicholas Spaeth to Burleigh County State's Attorney Patricia Burke (November, 1987). These opinions stress that a criminal proceeding which is transferred from municipal court to county court by operation of law is a county court case and not a municipal court case.

Given the above, it is my opinion that a county court in criminal proceedings transferred from municipal court pursuant to N.D.C.C. ? 40-18-15.1 upon a showing of reasonable cause may order that a transcript of the proceedings be made at the expense of the county.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

tca/vkk