



1964

## Digest of Attorney General Opinions

North Dakota Law Review

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## DIGEST OF ATTORNEY GENERAL OPINIONS

### WITNESSES—WITNESS FEES FOR STATE EMPLOYEES

May 25, 1964

May a state employee accept witness fees when subpoenaed by another state agency?

May he receive them when subpoenaed by a private party to testify regarding information obtained in performing official duties?

As to the first question, the opinion states: “. . . [T]he employee would not be entitled to collect witness fees, but the department calling the state employee as a witness would be liable for mileage and subsistence the employee is normally entitled to collect from his own department if additional expenses are involved.”

When called by a private party, the opinion concludes that the employee may accept the statutory fees and mileage, but they must be paid into the general fund. If not collected, “. . . it could amount to a violation of section 185 of the State Constitution which prohibits the state from giving aid to any private individual, except for reasonable support of the poor.”

### WORKMEN'S COMPENSATION—TIME FOR FILING CLAIMS

May 28, 1964

Is a claim for workmen's compensation for injuries suffered February 7, 1963 made within the one year time limit when the claim is mailed on February 7, 1964 and received the following day?

Section 65-05-01 of the North Dakota Century Code provides that the claim must be made “within one year after the injury or death.”

In holding this claim sufficiently timely, the opinion states: “. . . [W]e must necessarily conclude that the mailing of a claim within the statutory time constitutes making a claim. The statute specifically provides that the claim shall be made within one year. It does not provide that it must be made *before* the end of one year but rather *within*.”

## SCHOOL DISTRICTS—SPECIAL CLASSES FOR RETARDED CHILDREN

*June 19, 1964*

Whether a school district may provide classes for mentally retarded children who are not educable but who may profit from attending special classes.

The opinion noted that under chapter 15-59 of the North Dakota Century Code any school district may provide special education for "exceptional children" defined in section 15-59-01(1) as "educable children . . . whose educational needs are not adequately provided for through the usual facilities and services of the public schools, school districts, or state institutions because of physical, mental, emotional or social conditions. . . ."

The opinion concludes: ". . . [T]he determination of whether a child is educable as that term is used in the above section was not meant by the Legislature to be limited by any specific intelligent quotient. Whether a child is educable or not would be a question of fact, dependent upon all the circumstances."

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