

**OPINION
62-56**

February 26, 1962(OPINION)

COUNTIES

RE: County Officers - Salaries

This is in response to your letter in which you refer a request for an opinion from the county commissioners on the subject of salaries for county officials. This request is referred to our office on the basis that your salary as State's Attorney is or will be affected by the opinion. The law in question, upon which an opinion is requested, was amended by Chapter 123 of the 1961 Session Laws, amending section 11-10-10 and provides as follows:

SALARIES OF COUNTY OFFICERS. . . . 2. The county auditor, county treasurer, sheriff, county superintendent of schools, register of deeds, county judge, state's attorney, and clerk of the district court each shall receive the following annual salary, payable monthly, for official services rendered:

- a. Four thousand three hundred dollars in counties having a population not exceeding eight thousand;
- b. Four thousand four hundred dollars in counties having a population exceeding eight thousand population plus additional compensation of seventy dollars per year for each one thousand additional population or major fraction thereof, but not to exceed the total sum of five thousand four hundred dollars, and provided, however, that in counties where the population consists of more than twenty-five percent Indians who have not severed tribal relations, the county commissioners may adjust the salaries provided for herein within the limitations contained in this subdivision;
- c. In counties having a population in excess of thirty thousand the sum of five thousand eight hundred dollars. . . ."

The questions submitted are as follows:

1. Is it within the discretionary authority of the Commissioners to set elected county officials' salaries at \$4,300.00 per year?

2. If the present salary scale of \$4,300.00 is not within the discretion of the Commissioners, is the base salary of \$4,400.00 as set by Subsection (b), Section 2, Chapter 123, applicable?
3. If the \$4,400.00 salary scale, and the increased compensation of \$70.00 for each additional 1,000 population over 8,000 persons is applicable, how are the commissioners to determine the adjustment as to whether or not 25 percent of the persons of Indian descent of this County have severed their tribal relations?
4. Can the Commissioners set elected Rolette County officials' salaries the same as paid officials in other North Dakota counties having the same population according to the 1960 U.S. census?"

Upon examining the above provisions, it is noted that the Legislature did delegate to county commissioners the authority to set the salaries of the county officials within certain limitations. In delegating this authority, certain guides for standards were set up which are to be followed. A base of \$4,400.00 is established under subdivision (b) of subsection 2 of section 11-10-10. It then provides that in counties where the population consists of more than twenty-five percent of Indians who have not severed tribal relations, the county commissioners may adjust the salaries within the limitations of this subdivision. Generally, by usage and practice, the word "subdivision" refers to a division of a subsection; a subsection refers to the division of a section; a section is a division of a chapter; and a chapter is a division of a title. Thus, the term "this subdivision" by custom and usage refers to subdivision (b) only. If twenty-five percent of the population consists of Indians who have not severed their tribal relations, the county is authorized to set the salaries between \$4,400.00 and \$5,400.00. The \$5,400.00 is the maximum which may be reached by allowing \$70.00 or a major fraction thereof in excess of 8,000 population until the population reaches 30,000, at which time the \$5,800.00 is a fixed salary. Thus, the salaries of the county officials in your county having a population of 10,641 would be \$4,440.00 plus \$70.00 for each one thousand or major fraction thereof in excess of 8,000 population, or the sum equivalent to \$4,610.00. This would be the salary if the Indian question were not involved. However, if twenty-five percent of the population consists of Indians who have not severed their tribal relations, the commissioners may set the salary between \$4,400.00 and \$4,610.00.

It is to be observed that the law does not state "consisting of more than twenty-five percent of Indians", but rather "when the population of the county consists of more than twenty-five percent of Indians who have not severed their tribal relations." While the census in your county as disclosed in your letter shows the number of Indians and whites, it does not disclose the number of Indians, if any, which have severed their tribal relations. This is a question of fact which must be determined and resolved by the commissioners before they may employ or resort to said provision. This could be accomplished by actually obtaining a reliable report or by using any official report which contains such information. It would not appear that the commissioners may assume

that the Indian population in the county consists of Indians who have not severed their tribal relations.

As to the question whether this would constitute an unlawful delegation, we do not believe that the foregoing section is an unlawful delegation because it does set up standards, directions and guides for the commissioners in determining the salaries (16 Corpus Juris Secundum 140, page 668).

In direct response to question number one (1), the county commissioners under existing law may not set the salaries of the county officials at \$4,300.00 per year. The base salary is \$4,400.00. This also answers question number two (2).

In answer to question number three (3), the commissioners may use any official record for determining whether or not the Indian population in the county consists of Indians that have severed their tribal relations. If more than twenty-five percent of the population of the county consists of Indians which have severed their tribal relations, then the commissioners may set the salary between \$4,400.00 and \$4,610.00. The question whether the Indian population has severed their tribal relations is one of fact and must be resolved before the commissioners may resort to the provisions of subdivision (b). The commissioners may not assume that every Indian has not severed his tribal relations.

In answer to question number four (4), the commissioners may set the salaries of the Rolette County officials in the same manner as the salaries are set in other counties having similar population. The provisions of subdivision (b) are permissive - they are not mandatory. As such, the county commissioners may provide for a salary within certain limitations if the Indian population is more than twenty-five percent of Indians who have not severed tribal relations. However, if this question cannot be determined or satisfactorily resolved, then the formula set out in subdivision (b) would be applicable.

After due consideration, the answers given to the questions prepounded constitute the opinion of this office.

LESLIE R. BURGUM
Attorney General