

OPINION
63-81

May 29, 1963 (OPINION)

COUNTIES

RE: Property Assessments - Spot Checks

This is a reply to your letter of May 21, requesting my opinion on several questions relating to Senate Bills No. 51 and No. 217 enacted by the 1963 Legislature, both of which become effective on July 1, 1963.

Section 1 of Senate Bill No. 51 states that the board of county commissioners of each county shall provide for spot checks of real and personal property assessments in the county each spring, and it then provides for the procedure to be allowed in making these spot checks. The last sentence of the section provides that "the board of county commissioners may select such persons or agencies as may be necessary to carry out the provisions of this section, and provide for their compensation."

Your first question relating to this provision of Senate Bill 51 is whether the members of the board of county commissioners are authorized to make the actual spot checks in their county themselves, and your second question is, if the commissioners do have such authority, do they have the authority to provide compensation for themselves for services performed by them in making the spot checks.

In answer to the first question, it is my opinion that the provisions of Senate Bill 51 do not authorize the members of the board of county commissioners to personally make these spot checks. Section 1 of the bill states that the county board "shall provide for spot checks" and that the board "may select such persons or agencies as may be necessary to carry out the provisions of this section and provide for their compensation." In *State v. Borstad* 27 N.D. 533, 541, 147 N.W. 380, 383, the court, in considering the removal of a county commissioner from office for collecting fees for services for purchasing and distributing seed grain and collecting fees for services for purchasing and distributing seed grain and collecting therefor under a seed lien statute, said:

It may be that it would have been well for the legislature to have provided for compensation in such cases, and to have made the collection of the liens a special duty of the commissioners. It does not seem, however, to have done so. The seed lien statute, indeed (chap. 210, Laws 1909), seems to limit the duties of the commissioners to the issue and sale of bonds and warrants, the purchase the sale of seed grain and feed, and the examination and adjustment of applications for grain. It is true that section 2401, Rev. Codes 1905, as amended by chap. 118, Laws of 1911, gives to them the general superintendency of the fiscal affairs of the county. This general superintendency, however, can hardly be held to involve

the right to perform, or at any rate the right to charge for, services which would more properly belong to the auditor, the treasurer, the state's attorney, and the sheriff."

Because of the similarity between the situation in that case and the provisions of section 1 of Senate Bill 51 which do not, except by possibly a vague implication, authorize the members of the board of county commissioners to personally make these spot checks, it is my opinion that the board members do not have the authority to personally make such spot checks.

In answer to your second question relating to spot checking of assessments, it is also my opinion that the board of county commissioners cannot legally contract with any member of the board to pay him compensation for services performed by him in making the spot checks. This is because the members of the board are public officers and such a contract, in view of the conclusions already reached, would violate section 12-10-06, N.D.C.C., which provides that:

Every public officer authorized . . . make any contract in his official capacity, who contrary to law voluntarily becomes interested individually in such . . . contract, directly or indirectly, in guilty of a misdemeanor."

In a somewhat similar situation, this office has ruled that a contract between a board of county commissioners and one of its members by which the board member was appointed a tax collector pursuant to what is now section 57-22-29, N.D.C.C., at a fixed salary per month, violated the above-quoted section 12-10-06, but the section did not then include the phrase "contrary to law"; the decision also held that, as to amounts paid to the board member as a tax collector, "the member of the Board acting as such collector is liable for the amount received and the other County Commissioners are liable for the amount thus illegally paid." See the opinion date April 22, 1944, on pages 42-43 of the printed "Report of the Attorney General of North Dakota to the Governor," July 1, 1942 to June 30, 1944.

Turning now to Senate Bill 217, this bill authorizes the board of county commissioners of each county to appoint a county supervisor of assessments and provides that this supervisor of assessments may be either the county auditor or the deputy county auditor or other elected official or any other person who is qualified. The bill further provides that:

The compensation of such supervisor shall be determined by the county commissioners and such position may be either on a full-time or part-time basis in their discretion."

Your first question concerning Senate Bill 217 is whether the board of county commissioners can, under the bill, pay the county auditor compensation that is in addition to his regular salary as county auditor if they appoint him supervisor of assessments for the county; and your second question is, if the board members appoint any other county officer to this position of supervisor of assessments can they pay him compensation for it that is in addition to his regular salary as such county officer.

In answer to this first question, it is my opinion that if the board of county commissioners appoints the county auditor to the position of county supervisor of assessments, the board can pay him compensation in addition to that he receives as county auditor. This office held in another opinion appearing on pages of 54-55 of the Report of the Attorney General of North Dakota to the Governor, July 1, 1958 to June 30, 1960, that the county auditor could be paid additional compensation for services rendered as zoning director or secretary of the county planning commission.

That opinion was based on the fact that since a provision of section 11-1010, 1957 Supp. to N.D.R.C. 1943, that the salary provided in that section was the only salary that could be paid to the county officer was removed by House Bill 632 of the 1959 Legislature (Chapter 121, S.L. 1959), the Legislature intended to remove that limitation even though no change was made in subsection 6 of section 11-1302, N.D.R.C. 1943, which provided, and still provides, that the county auditor shall perform and transact all county business without extra compensation.

For the same reasons, I believe the county auditor can be paid additional compensation for his services as county supervisor of assessments if he is appointed to that position. Similarly, additional compensation could be paid to any other county office, or deputy, that might be appointed to the position, except, for reasons already stated, a member of the board of county commissioners could not be paid any additional compensation.

Your final question is whether the county budget should include items to cover expenditures that would be necessary for providing for the spot check program and for the county supervisor of assessments if that position is established.

Section 11-23-02, N.D.C.C., requires the county auditor to prepare the annual budget setting forth, among other things,

3. The amount required for each department, public office, and public official, . . . and for each and every purpose authorized by law for which it is desired to raise money for the ensuing year including all contemplated undertakings for the ensuing year."

Section 11-23-08, N.D.C.C., provides in part that:

No new or unusual expense shall be incurred, permanent contract made, nor salary increased until an appropriation therefor has been made by the board of county commissioners."

The court in Eddy v. Krowok 54 N.D. 220, 225, 209 N.W. 225, 231, held that items covering "each and every purpose authorized by law" must be included in the annual county budget.

It is therefore my opinion that provision should be made in the county budget for the expenditures that will be necessary for making the spot checks of assessments and also for the expenditures that will be necessary for the position of county supervisor of

assessments if that position is established by the board of county commissioners.

HELGI JOHANNESON

Attorney General