

**OPINION
64-310**

July 8, 1964 (OPINION)

Mr. Eugene Rich

State Examiner

RE: State Examiner - Municipalities - Fees for Audits

This is in reply to your letter informing us as follows:

Our office made an examination of the village of Selfridge during February of this year. We have billed the city for \$418.75 for the examination which the village board has agreed to pay. However, the firm of Smestad and Lawinger have billed this department for \$40.50 for office rent computed at the rate of 13 1/2 days at \$3.00 per day. The village board has indicated they will not pay the examination fee until rent is paid to Smestad and Lawinger.

The community facilities are unheated and in an extremely poor state of repair. At the time of the examination no demand was made for rent and no agreement was made that rent would be paid. The records of the city were located in the building and it was assumed the city would provide space as all other cities do free of charge."

You ask:

Can we pay for this rent charge? Can we add the cost of the rent to the amount of the billing to the city? If the rent can be paid would it be proper to charge legal and investigation fees out of our appropriation?"

The statutory provision, section 6-01-21.2 of the 1963 Supplement to the North Dakota Century Code, provides in part:

* * * *Fees for the examinations provided for in this section shall be charged by the state examiner at the rate of twenty-five dollars per day for the time used by himself or other persons designated by him in supervising, filing and corresponding in connection with such reports of examination, and for the time used by each deputy examiner or other person or persons in making such examinations and otherwise preparing and typing the reports of examinations herein provided for. Fee for an extra day shall be charged for each person who may be required to travel to participate in the examinations in this section provided, and all fees for the examinations herein provided shall be paid by the subdivision examined to the state treasurer and by him credited to the general fund of the state."

In reading the statutory provision, we note that the fee herein

charged is for time used in the examination of the examiner or his deputies. The state examiner's appropriation items that could conceivably be used for such purposes as rental of office space would only be "miscellaneous" and "legal fees and investigation costs." These items in the 1963 appropriation are certainly too small to be intended for rental of office space in the examinations the state examiner makes throughout the state.

Your letter does indicate the cities customarily furnish office space without cost. We note that the statutes do provide for such examinations and do not require that the state examiner's office furnish office space for such examinations.

On such basis, it is our opinion that the fee is payable to the state examiner's office on the basis of the above quoted portion of section 6-01-21.2 of the North Dakota Century Code, and in the amount there set out, without regard to costs to the city of the necessary office space.

HELGI JOHANNESON

Attorney General