

OPINION
65-174

May 19, 1965 (OPINION)

Mr. Lloyd F. Zander

Commissioner

Department of Veterans Affairs

RE: Military - Veterans Affairs and Veterans Aid - Appropriation

This is in response to your letter in which you state that for a number of years you have prepared and presented the budget for the North Dakota Veterans Affairs and Veterans Aid Commission to the North Dakota Legislature. The Thirty-ninth Legislative Assembly combined the budgets in one appropriation under Senate Bill No. 8. The line item appropriations as found in Senate Bill No. 8 are as follows:

"Salaries and Wages.....\$ 72,000.00

(Including salary of Commissioner of Veterans
Affairs, not to exceed \$14,000.00 for
the biennium).

Fees and supplies..... 18,700.00

Supplies and Materials..... 3,300.00

Emergency (in the event the veterans'

administration closes the Fargo, N.D.

office this appropriation will be

available for transfer to other items

of this budget upon approval of the

Emergency Commission)..... 15,000.00

TOTAL.....\$109,000.00

As can be easily observed, no provision has been made in the appropriation as to which amount is for the Department of Veterans Affairs and which is for the Veterans Aid Commission. You then ask who is to determine how much of the total appropriation is available

to the Department of Veterans Affairs and how much of the appropriation is available to the Veterans Aid Commission.

You further state that for a number of years you have been receiving the sum of \$75.00 per month from the Veterans Aid Commission as compensation for your services as executive secretary to the Veterans Aid Commission. You then inquire if there is any legal impediment which would bar you from continuing to receive the \$75.00 per month from the Veterans Aid Commission.

You also advise that the loan officer for the Veterans Aid Commission is also the Assistant Commissioner of Veterans Affairs. He has received \$100.00 per month from the Department of Veterans Affairs. You then inquire if there is any legal impediment prohibiting him from receiving the \$100.00 per month from the Department of Veterans Affairs for services rendered as Assistant Commissioner of Veterans Affairs.

Upon reviewing the statutory provisions, we note that the Veterans Aid Commission is established pursuant to the provisions of section 37-14-01 of the North Dakota Century Code. The Department of Veterans Affairs and the Office of Commissioner of Veterans Affairs are created under the provisions of chapter 37-18 of the North Dakota Century Code. The duties of the Commissioner of Veterans Affairs are set forth in section 37-18-04. 37-18-09 provides that the Department of Veterans Affairs is a continuation of the former Office of Veterans Service Commissioner, and that the responsibilities and duties formerly given to the Veterans Service Commissioner are now transferred and delegated to the Commissioner of Veterans Affairs.

In examining the duties imposed upon the Commissioner of Veterans Affairs, it is found that he has general supervision of programs designed for the benefit of veterans. He also has the duty to coordinate with the agencies and instrumentalities of the state.

The function of the Veterans Aid Commission is primarily limited to determine whether or not applications for benefits in the form of loans should be granted to certain applicants. The compensation for the members of the Veterans Aid Commission is set forth in section 37-14-13 and is limited to \$5.00 per day plus actual and necessary expenses. In this respect it is observed that the executive secretary in the same section is, however, limited to his actual and necessary expenses while actually engaged in the performance of his office. This becomes important as to the other question asked.

The functions of the Veterans Aid Commission and the Office of Commissioner of Veterans Affairs, or the Department of Veterans Affairs, are in many instances interrelated and seek to accomplish the same general objectives, and that is to aid the veterans. The coordinator of these various activities is the Commissioner of Veterans Affairs.

It is therefore our opinion that the Commissioner of Veterans Affairs, with the advice of the Veterans Aid Commission and the Advisory Committee as designated in section 37-18-03, determines the amount of appropriation available to the Office of Commissioner of Veterans and the Veterans Aid Commission under Senate Bill No. 8.

As to the question whether or not you may continue to receive \$75.00 per month from the Veterans Aid Commission for your services as executive secretary to the Veterans Aid Commission, it becomes necessary to examine some of the specific language pertaining to the appropriation and the duties of the Commissioner of Veterans Affairs.

Under section 37-18-08 it is provided that the salary of the Commissioner shall be the amount appropriated therefore by the Legislative Assembly. It also provides that he shall be allowed such amounts for travel, clerk hire, and expenses as may be prescribed from time to time by legislative appropriations.

Under section 37-14-01 we find the following provisions as pertaining to the Veterans Service Commissioner: "The veterans service commissioner shall be and serve as the executive secretary of the veterans aid commission." Section 37-18-09 provides that the Commissioner of Veterans Affairs shall succeed to all of the duties and responsibilities formerly given and delegated to the Veterans Service Commission. The Legislature in appointing funds to the Commissioner of Veterans Affairs and the Veterans Aid Commission specifically provided the sum of \$72,000.00 for salary and wages and specifically limited the salary of the commissioner of Veterans Affairs with the following language: "* * * including salary of commissioner of veterans affairs, not to exceed \$14,000 for the biennium." This, coupled with the provisions of section 37-14-13, which authorizes payment of \$5.00 per day to members of the Veterans Aid Commission but limits the payments to the executive secretary to "his actual and necessary expenses", leaves the unmistakable implication that the Office of Commissioner of Veterans Affairs performs the function of executive secretary to the Veterans Aid Commission as a statutory duty and does so without further compensation. It is our opinion that the Commissioner of Veterans Affairs is limited to the sum of \$14,000.00 per biennium.

As to your question pertaining to the loan officer of the Veterans Aid Commission, who also acts in the capacity of Assistant Commissioner of Veterans Affairs and receives \$100.00 per month from the Department of Veterans Affairs, we do not find any statutory language prohibiting such arrangement. However, inasmuch as the Legislature combined the appropriations for the two offices, (Commission of Veterans Affairs and Veterans Aid Commission), and because the Commissioner of Veterans Affairs has the responsibility of determining the amount of appropriation available for each of said offices, the Commissioner of the Veterans Affairs may designate the salary of the Assistant Commissioner of Veterans Affairs and pay same from the appropriations made available under Senate Bill No. 8.

Under this conclusion the question resolves itself.

HELGI JOHANNESON

Attorney General