

OPINION
65-215

June 28, 1965 (OPINION)

Mr. Eugene Rich

State Examiner

RE: Officers - Political Subdivisions - Travel Expenses

This is in reply to your letter of June 21, 1965, relative to section 44-08-04 of the North Dakota Century Code, as amended by House Bill No. 531. You state the following facts and questions:

"Section 44-08-04 as amended by House Bill 531 changes procedure for claiming travel expense. It appears that this section applies to political subdivisions of the state as well as state employees.

"Section 21-05-01 of the Century Code also provides for some procedures for county and township employees to claim travel expenses. This section does not limit amounts for meals and lodging but does require receipts.

"May we have your opinion upon the following questions:

1. Are subvouchers or receipts required for claims over \$1.00 on county travel vouchers?
2. Do the limits upon meals and the criteria for allowing expense as set forth in section 44-08-04 apply to counties?
3. What authority do the county commissioners or other county officers have to set a rate for such expenses less than those set forth in section 44-08-04 as amended?"

Section 21-05-01 of the North Dakota Century Code governs claims against townships or counties. This section was not amended by the 1965 Legislature. It provides in part as follows:

"* * * Where charges are made for money expended in the performance of official duties in any claim, account, or demand against a North Dakota county, all items of one dollar or more, so expended and charged for, shall be covered by a subvoucher or receipt, which shall be signed by the person to whom the money was paid. The subvoucher or receipt shall show at what place, on what date, and for what, the money expended was paid. The subvoucher or receipt shall be forwarded with the bill, claim, account, or demand against the county. * * *"

Section 44-08-04, as amended by House Bill No. 531 of the 1965 Legislative Assembly, provides in part:

"* * * Each elective or appointive officer, employee, representative, or agent of this state, or of any of its

subdivisions, agencies, bureaus, boards, or commissions, may make claim and shall upon approval of such claim be paid as an allowance for meals and lodging while engaged within this state in the discharge of a public duty away from his normal working and living residence for all or any part of any quarter of a day at the following rates for each quarter of any twenty-four hour period: * * *." (Emphasis supplied.)

The counties are subdivisions of the state.

Section 44-08-04 of the North Dakota Century Code, as amended by House Bill No. 531, further provides in part:

"* * * Verification of claims shall not be required for the first three quarters listed above and only a lodging receipt shall be required for the fourth quarter; provided, however, the amount paid for such lodging shall not be required to be listed. * * *"

"* * * Such persons engaged in travel without the state shall not claim a sum in excess of eight dollars a day for meals and in addition thereto actual lodging expenses. Verification by receipt for such out of state travel expense shall be required only for lodging expense claimed. * * *"

"* * * The head of any department, institution, or agency of this state may set a rate for such expenses less than those set forth in this section for any person or persons under his authority. Verification of any other type of expense not prescribed by this section shall be as prescribed by the state auditing board except no receipt shall be required for taxi or cab fares up to and including the sum of five dollars. The state auditing board shall disapprove any claim it shall determine to be in error or unlawful or not within the limits of legislative appropriations. The travel expenses of the governor, lieutenant governor, judges of the Supreme Court, district courts and county courts of increased jurisdiction, and members of the legislative assembly shall not be limited by the expense allowance limitations prescribed by this section."

It is immediately obvious that there is a conflict between section 21-05-01 of the North Dakota Century Code and section 44-08j04 of the North Dakota Century Code, as amended by House Bill No. 531, insofar as counties are concerned. Section 21-05-01 requires a receipt or subvoucher for any expenditure of one dollar or more. Section 44-08-04, as amended, does not require such receipts except for lodging. Section 44-08-04 also purports to include counties, since they are subdivisions of the state, insofar as this matter is concerned. The provisions relative to the lesser rate for expenses as established by the head of the department, institution or agency of the state and verification form as established by the State Auditing Board are, however, obviously only applicable to state employees.

There would appear to be two rules of statutory construction involved in this matter. The first is that a later statute supersedes an earlier enacted statute if there is a conflict. The second rule is

that a special statutory provision prevails over a general statutory provision if there is a conflict. Section 21-05-01 could be said to be a general statute when compared with section 44-08-04.

We would note, however, that section 44-08-04, prior to its amendment by the 1965 Legislature, applied also to the state "or any of its subdivisions." There were no conflicts between section 21-05-01 and section 44-08-04 prior to the amendment of the latter statute. The only limitation on expenses insofar as county employees are concerned are to be found in section 44-08-04. It is therefore necessary to apply this provision to county employees insofar as it is applicable, and it would appear that section 44-08-04, as amended by House Bill No. 531 of the 1965 Legislature, would prevail since it is the most recent statement of the intent of the legislature with regard to this matter. Therefore subvouchers or receipts would not be required for claims over \$1.00 on county travel vouchers except with regard to lodging, and the limits upon meals and the criteria for allowing expense as set forth in section 44-08-04 would apply to counties where indicated.

Insofar as your third question is concerned, it is to be noted that section 44-08-04, as amended, only authorizes the "head of any department, institutions or agency of this state" to set a rate for expenses less than those provided by that section. This would not apply to the political subdivisions, including counties, since they are not referred to in this portion of the statute. We are unable to find any similar provisions relative to the authority of the board of county commissioners, although the commissioners or county department could perhaps make this a condition of employment.

In summary, it is our opinion:

1. No subvouchers or receipts are required for claims over \$1.00 on county travel vouchers except that a lodging receipt is required.
2. The limits upon meals and the criteria for allowing expense as set forth in section 44-08-04, as amended by House Bill No. 531 of the 1965 Legislature, apply to counties insofar as they purport to include counties.
3. There is no authority for the county commissioners or other county officer to set a rate for such expenses less than those set forth in section 44-08-04, as amended.

HELGI JOHANNESON

Attorney General