

OPINION
67-219

July 27, 1967 (OPINION)

Mr. Tor A. Hegland

Executive Secretary

Employees Retirement Board

RE: State - Employees Retirement System - Expenses of Board Members

This is in response to your request for an opinion whether or not the chairman of the State Retirement Board may receive a payment of \$40.00 per day in addition to the honorarium and expense reimbursement.

You state that the board adopted the following resolution as shown in its minutes:

"Mr. Lahaug moved that Chairman Guthrie, when employed by the Retirement Board on matters of the retirement system, be paid \$40.00 per day, plus being reimbursed for expenses on the same basis as all state employees on authorized travel. Being seconded by Mr. Pederson, the motion was passed unanimously."

Section 54-52-03, as the material here provides, is as follows:

"There is hereby created a governing authority of the system to consist of a board of five persons known as the retirement board. No more than one member of the board shall be in the employ of a single department, institution or agency of the state.

1. One member of the board shall be appointed by the governor to serve a term of five years. The appointee shall be a North Dakota citizen who is not a state employee and who by experience is familiar with money management. The citizen member shall be chairman of the board. (Underscoring ours)

* * *

4. Members of the board shall receive a honorarium of twenty-five dollars for each month during which the board has been in session. This shall be in addition to any other pay or allowance due the member, plus an allowance for expenses they may incur through service on the board."

The honorarium applies to all members.

The honorarium also constitutes the "pay" for serving on the board.

The Legislature having specifically provided for the specific compensation for services rendered on the board precludes any other type of compensation. The board has been given authority to appoint an executive secretary who shall hire the staff. There is no further

provision for the board to hire persons to perform services for the retirement board except for such technical experts as recited in section 54-52-04, subsection 4 and subsection 6.

The term "this" as found in the sentence of subsection 4 in section 54-52-03 N.D.C.C., must obviously refer to the honorarium and the expression "shall be in addition to any other pay or allowance" quite obviously refers to such board members who are state employed or officers of the state. This language is designed to permit the payment of the honorarium and is not an exception so as to permit further compensation to the board members in addition to the honorarium and reimbursement of expenses. This language quite obviously refers to regular pay and allowances and fringe benefits which are allowed to state employees including state officers.

If the chairman were to be employed by the board to perform services the state retirement board being a state agency, the chairman would then be an employee of the state and as such would be disqualified from being a member of the board because he would no longer be "not a state employee."

There is nothing in the Act which suggests or indicates that the chairman may be reimbursed in a different manner than other members of the board.

The term "allowance" is used twice in the second sentence in subsection 4 and from the manner in which it is used, it is quite obvious that it has reference to reimbursement for travel and health insurance benefits, vacation with pay and such other fringe benefits. It does not mean that the term "allowance" is used to indicate that additional salary may be paid to board members.

The Legislature having specified the amount to be paid to a board member for his services precludes any further payment.

It is, therefore, our opinion that the board does not have the authority to pay any other amount for services rendered except the amount of twenty-five dollars each month in which the board has been in session plus reimbursement for expenses as allowed by statute.

HELGI JOHANNESON

Attorney General