

**OPINION
70-124**

July 13, 1970(OPINION)

The Honorable W. J. Austin
County Judge
Burleigh County Court of Increased Jurisdiction

RE: Counties - Salaries of Officers - Increase

This is in response to your letter in which you call our attention to the provision of section 11-10-10 of the N.D.C.C. as amended by Chapter 129 of the 1969 Session Laws. You then ask for an opinion whether or not the county commissioners may take advantage of this section to raise the salary of a judge of a county court of increased jurisdiction by 10 percent. Section 11-10-10 as amended, among other things, provides as follows:

"In counties having a county court of increased jurisdiction the salaries of the judges of county courts of increased jurisdiction shall be set out in section 27-08-08. The county superintendent of schools shall receive for any trips necessarily made within his county in the performance of school district reorganization duties the same mileage as he receives under the provisions of section 11-10-15. The board of county commissioners of any county may, by resolution, increase the salary of any full-time county official by an amount not to exceed ten percent above the salary provided in this section or section 27-08-08, if, in the judgment of such board, by reason of duties performed, the official merits the increase. Any county official performing duties on less than a full-time basis may be paid a salary set by the board of county commissioners in any amount up to ten percent less than the salary provided for that official in this section."

The Act as initially introduced specified in exact amounts the salaries of the various county officials in accordance with the population. Amendments were proposed but rejected. The Act was then referred to a conference committee and the above worded language is the result of the efforts of the conference committee.

From the discussions on the floor and in the conference committee it appeared members of the legislature felt strongly that it was unfair to set a specific amount as salary for the various county officials based solely on population without regard to the work load of the particular office.

It was the opinion of many that the county commissioners should have some latitude in determining the salaries of the various county officials by taking into account the work load, financial capabilities of the county, responsibility of the office and matters of that kind. This concern actually became part of the bill and was enacted into law. It is now found in section 11-10-10.1 which provides as follows:

"11-10-10.1. LEGISLATIVE INTENT IN REGARD TO COUNTY SALARIES. It is the intent of the legislative assembly that the several boards of county commissioners shall exercise the responsibility of setting the salaries of county officials within the limits imposed by section 11-10-10. A board of county commissioners, in making a decision in regard to a county official's salary, should take into account the financial status of the county; the responsibilities of the position; and any other factors which the board may deem relevant in arriving at such decision."

The salaries of judges of county courts of increased jurisdiction are set forth in section 27-08-08 as amended, by Chapter 282 of the 1969 Session Laws. Again it is noted that the salary is geared to the population.

It is significant to note however that section 11-10-10 makes specific reference to section 27-08-08 in the underlined portion. This provision coupled with the legislative intent as expressed in section 11-10-10.1 clearly illustrates that the legislature intended for the county commissioners to exercise their collective judgment in determining the salaries of county officials including judges of the county court of increased jurisdiction, within certain limits. The county commissioners are authorized to increase the salaries of a judge of the county court of increased jurisdiction by 10 percent of the amount set forth in section 27-08-08 if such increase is warranted.

Therefore in direct response to your question it is our opinion that the county commissioners may increase the salary of a judge of a county court of increased jurisdiction by 10 percent if in their judgment such increase is warranted by taking into account the responsibilities of the position, the work load, the financial status of the county and other relevant factors.

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