

**OPINION
72-128**

June 30, 1972 (OPINION)

Mr. John O. Garaas

State's Attorney

Cass County

RE: Counties - Welfare Board - Mileage

This is in response to your letter in which you set forth the following:

"There are two members of the Cass County Board of County Commissioners appointed to the Cass County Welfare Board. One of these commissioners resides quite some distance from Fargo, and, on occasion, attends meetings of both the Cass County commission and the Cass County Welfare Board on the same day. The Cass County Commissioners are paid pursuant to North Dakota Century Code section 11-10-10(3) at the rate of \$4,800.00 per year. By receiving this as an annual salary, they forego claims for mileage expenses.

"The compensation statute for members of the County Welfare Board provide in part at North Dakota Century Code section 50-01-08:

Members shall be reimbursed by the county for expenses actually incurred in the performance of their official duties and shall be paid legal mileage for necessary travel.

"The issue that has arisen is whether the County Commissioners who sit as members of the County Welfare Board are entitled to mileage expense reimbursement from the County Welfare Board for mileage traveled to County Welfare Board meeting on the same day that the commissioners attend a County Commission meeting. Would you please furnish us with your opinion on this question."

As you observed, section 11-10-10(3) authorizes the board of county commissioners to set a maximum salary for each commissioner which will be compensation for expenses and mileage or in the alternative the county commissioners may authorize reimbursement on a per diem, mileage and expense basis. Apparently the County commissioners of Cass County have resolved that each commissioner is to receive compensation at a rate of \$4,800 per year (based on population) instead of reimbursement on a mileage, per diem or expense basis.

Members of the county welfare board, pursuant to the provisions of section 50-01-08, are authorized compensation on a per diem basis of \$10 per day not to exceed 35 days (in instances where the county has a population in excess of 30,000) a year. It also provides as follows:

"* * *Members shall be reimbursed by the county for expenses actually incurred in the performance of their official duties and shall be paid legal mileage for necessary travel.* * *"

The reimbursement for performing services as a member of the county welfare board is on the basis of expenses actually incurred and for necessary travel. We would further note that this is a reimbursement provision and not a compensation for services rendered except for the \$10 a day.

The county commissioners who are also members of the county welfare board according to your letter attend meetings of both the county welfare board and board of county commissioner activities on the same day. The travel necessitated to attend the board of county commissioners meeting has been incurred for purposes of attending the meeting. Assuming the meetings are conducted at the courthouse or in the immediate proximity, no further travel is necessary. Consequently, no reimbursement can be claimed. The authorization for mileage under section 50-01-08 is only on the basis of the travel which was necessary.

The county commissioners, having resolved to pay and to individually accept the "payment" of \$4,800 per year in lieu of filing claims for reimbursement, for travel and per diem, in effect agreed not to charge any mileage for attending the meetings on the basis that they have already been paid for this by accepting a lump sum.

Reimbursement statutes for mileage do not contemplate that a person should collect mileage for more than one governmental body or agency for traveling the same distance for attending meetings of different boards on the same day.

It is therefore our opinion that county commissioners, who are also members of the county welfare board, attending meetings of the county welfare board and the board of county commissioners on the same day are not entitled to collect extra mileage for attending the meeting, where the board of county commissioners under the provisions of section 11-10-10(3) resolved to give a lump sum within the statutory limits to each commissioner in lieu of filing individual and separate claims for travel and expenses in connection with the duties of the office of county commissioner.

It is our further opinion that if the meeting is extended so that the member will incur additional expenses for meals which would not be incurred if it were not for the county welfare board meeting, the county commissioner would be entitled to file a claim for and receive reimbursement for the additional expense.

HELGI JOHANNESON

Attorney General