

**OPINION
73-116**

July 11, 1973 (OPINION)

Mr. Dewel E. Viker, Jr.
State's Attorney
Traill County
Hillsboro, ND 58045

Dear Mr. Viker:

This is in response to your letter of June 7, 1973, with regard to the interpretation of Senate Bill 2335, now Chapter 87 of the 1973 Session Laws.

You state that "section 2 (11-10-10) subsection 4D reads as follows:

"In the event the county has a group insurance program for its employees for hospital benefits, medical benefits, or life insurance financed in part or entirely by the county, such benefits may be in addition to the salaries payable to county officials under sections 1 and 2 of this Act, section 11-15-03.1 and this section."

You then point out that following same, subsection 5 sets the salary formula for county commissioners.

Your question as stated is: "May the group medical benefits referred to above be paid to the county commissioners in addition to the regular formula salary in the same manner as other county officials expressly described above."

The statute is rather interesting in its references to group insurance programs. Thus, in section 1, with regard to clerks of district court salaries, it specifically provides:

"In the event the county has a group insurance program for its employees for hospital benefits, medical benefits, or life insurance financed in part or entirely by the county, such benefits may be in addition to the salaries payable to the clerk of district court."

Likewise, in section 3 with regard to sheriffs it specifically provides:

"In the event the county has a group insurance program for its employees for hospital benefits, medical benefits, or life insurance financed in part or entirely by the county, such benefits may be in addition to the salaries payable to the sheriff."

The bill had a rather interesting history through the legislative session. As originally introduced, it made no provision for insurance. In the course of passage, by committee and floor amendments, the insurance provisions were inserted. Perhaps, due to

this method of incorporating these provisions, the statute as finally enacted is somewhat repetitious in having the specific provision for such insurance in the first section with regard to clerks of the district court, in the third section with regard to sheriffs and with the provision you call our attention to, in the second section. The language, however, in the second section of the act is plain and unambiguous. It provides:

"In the event the county has a group insurance program for its employees for hospital benefits, medical benefits, or life insurance financed in part or entirely by the county, such benefits may be in addition to the salaries payable to county officials under sections 1 and 2 of this Act, section 11-15-03.1 and this section."

The provision for county commissioner's salary or per diem is also contained in section 2 of the act and section 11-10-10 of the code, and this would be covered by the quoted language from said second section either by the mention of "sections * * * 2 of this Act", or by mention of "this section". While in some circumstances the county commissioner's office differs from that of the county auditor, county treasurer, county superintendent of schools, register of deeds, county judge and state's attorney, being usually more of a quasi-legislative nature, or on part time or "per diem" basis, rather than an executive or administrative full time office, we think it clear that the county commissioner is a county official, and where paid a salary, same is provided for in section 2 of section 11-10-10 of the Act. On such basis it is our opinion that the group medical benefits referred to above may be paid to the County Commissioners in addition to the regular formula salary in the same manner as other county officials.

We hope the within and foregoing will be sufficient for your purposes. Our former opinions such as that of date July 20, 1959, to the Divide County State's Attorney to the effect that county officers whose salaries are established by statute may not be included in such programs unless the legislature specifically provides for such program are, of course, superseded by this new legislation.

Sincerely yours,

ALLEN I. OLSON

Attorney General