

**OPINION
73-165**

August 17, 1973 (OPINION)

Mr. Linn Sherman
State's Attorney
Kidder County
Steele, ND 58482

Dear Mr. Sherman:

This is in response to your letter with regard to the salary of the register of deeds - clerk of court - county judge of your county.

You inform us that under the provisions of Senate Bill No. 2335 enacted by the 1973 Session of the Legislative Assembly (now contained in Chapter 11-10 of the 1973 Supplement to the North Dakota Century Code) provision was made for the salary of the Clerk of the District Court which is slightly higher than the salary provided for the register of deeds and county judge in those counties having more than 4,000 population and less than 8,000 population, which is the category in which you state your county falls.

You point out further that your county has a population of less than 6,000, and that pursuant to section 11-10-02 of the Century Code, the register of deeds also acts as clerk of the district court and county judge.

Your question is stated in substance as:

" * * * under these circumstances" (in your county) "should the salary of the register of deeds, who also acts as clerk of the district court, be governed by the provisions setting the salary for the register of deeds."

Your question is not without difficulty. While said Senate Bill 2335, as amended in the course of passage through both houses, approved by the Governor, etc., appears to be quite clear and unambiguous, considered in the light of section 11-10-02 of the North Dakota Century Code, ambiguities inherent therein become quite patent. In some of the population classes specified in said Senate Bill 2335, the clerk of court is (by reason of said section 11-10-02) also county judge and in some instances he is also (by reason of said section 11-10-02) register of deeds. In prior amendments and revisions of this chapter of the code (going back as far as 1933) no difficulty arose as all three offices drew the same salary. Under the current amendment, however, where one of these offices is designated as drawing a higher salary, it does become extremely difficult to determine whether the legislature intended that the person actually holding two or more of these offices should draw the lower salary designated for one of the offices, or the higher salary designated for another of these offices.

We have researched the matter very thoroughly, considering prior amendments of the statutes involved, code revisor's notes, section

173 of the North Dakota Constitution, the Senate and House journal entries and committee reports and minutes relating to said Senate Bill 2335. While we could not specify any one of these factors as being decisive of the matter, looking to the entire legislative history and background of the matter, Senate Bill 2335 in its entirety the additional duties of clerk of court imposed on the individual holding the offices, etc., we must necessarily conclude that the legislature did intend that the person holding these offices (including the office of clerk of court) should get the salary specified for that office. It is thus our opinion that in the circumstances you describe, the salary of the person holding the office of register of deeds, who pursuant to section 11-10-02 also as compensation for all of his services, the slightly higher salary specified for clerk of the district court, rather than the slightly lower salary specified for the register of deeds or county judge. The same reasoning would also apply where the person involved, due to the population status of the county pursuant to section 11-10-02 of the North Dakota Century Code performs the duties of the clerk of court and county judge only.

We hope the within and foregoing will be sufficient for your purposes.

Sincerely,

ALLEN I. OLSON

Attorney General

(Written by Adams)