

**OPINION**  
**76-57**

July 19, 1976 (OPINION)

Mr. John M. Olson

States Attorney

Burleigh County

Box 1901

Bismarck, ND 58501

RE: Salaries of County Officer, 11-10-10, N.D.C.C.

Dear Mr. Olson:

This is in reply to your letter of July 8, 1976, relative to the above-captioned section. You have issued an opinion dated July 6, 1976 to the county auditor advising that a retroactive salary payback was proper in view of a special federal census taken in 1975. You ask whether we agree with your opinion. You state the following facts:

" . . . a special federal census was conducted in February of Burleigh County, North Dakota. Thereafter, a preliminary statement by the special census supervisor was prepared and received by Burleigh County in March, 1975, indicating that the population of Burleigh County had increased to an excess of 46,000. Thereafter, by letter dated July 16, 1975, the Deputy Director of the Bureau of the Census prepared an official statement attaching an abstract of Burleigh County establishing that the population had increased to an excess of 46,000 people. Prior to that time all county officials had completed their budget request and their salaries were thereafter set in accordance with previous population figures. The difference in the population figures have established an increased base salary in accordance with the provisions of subsection 1 of section 11-10-10, N.D.C.C.

"Based upon the foregoing facts, I concluded that the base salaries of all county officials affected thereby would have increased in the sum of \$500.00. I also concluded that such increase was established on July 16, 1975, the date of the official statement served upon Burleigh County. Also, it is my opinion that although budget and appropriation determinations had already been made, this would not bar a retroactive payback to those affected county officials."

Section 11-10-10 of the N.D.C.C., as amended by the 1975 Legislative Assembly, provides in part:

1. The salary of the county auditor, county treasurer, county superintendent of schools, register of deeds, county judge, state's attorney, clerk of district court, and sheriff

shall be regulated by the population in the respective counties according to the last preceding official federal census from and after the date when the official report of such census shall have been published by the director of the census or such other official as may be charged with the duty of making such official publication.

2. The county treasurer, register of deeds, county judge, county auditor, clerk of district court, sheriff, and state's attorney each shall receive the following annual salary, payable monthly, for official services rendered:

\* \* \*

- c. Eight thousand nine hundred dollars in counties having a population exceeding eight thousand plus additional compensation of one hundred dollars per year for each one thousand additional population or major fraction thereof over eight thousand. However, in counties where the population consists of more than twenty-five percent Indians who have not severed tribal relations, the county commissioners may adjust the salaries provided for herein within the limitations contained in this subdivision.
- d. State's attorneys in counties having a population exceeding thirty-five thousand shall receive a salary of from sixteen thousand one hundred to twenty-four thousand dollars, to be determined by resolution of the board of county commissioners.

\* \* \*"

In your opinion you conclude that the March, 1975 letter from the Bureau of Census was not considered by you as the official report of the census published by the director of the census or such other official, as may be charged with the duty of making such official publication. You further conclude that the letter of July 16, 1975, constituted an official notice from the director of the census or such other official as may be charged with the duty of making such official publication, as provided by Section 11-10-10(1). You further conclude that all county offices affected thereby are entitled to an increase salary base as a matter of law retroactive to July 16, 1975.

It might have been preferable to have some statement by the director of census as to what that agency considers the official report of the census. However from the facts available to us, it would appear that the official statement of the Deputy Director of the Bureau of the Census, dated July 16, 1975, and attaching an abstract of the population of Burleigh County would constitute the official publication of the report of such census as provided in Section 11-10-10(1) of the N.D.C.C., as amended by the 1975 Legislature. We further note that section specifies that the salary "shall be regulated" by the population in the county "from and after the date when the official report of the census" is made. In view of such statutory language, it would appear those county officials in office

from and after that date would have been entitled to the additional salary as a matter of law, notwithstanding the fact the budget had already been prepared for the next fiscal year. We are, therefore, in agreement with your opinion and believe the county officials in office from July 15, 1975, to the present are entitled to the increase as a matter of law. We note in passing that such legislation does not affect the salary of the states attorney in counties exceeding thirty-five thousand in population or the county superintendent of schools whose salary is specified in another subsection of 11-10-10.

We might also suggest, for the future, that in those counties in which the salary may be affected by such shifts in population and a proposed special census, the county commissioners make some provision therefor at the time of preparation of the budget.

Sincerely,

ALLEN I. OLSON

Attorney General