

Date Issued: March 8, 1983 (AGO 83-12)

Requested by: Robert G. Hoy, Cass County State's Attorney

- QUESTION PRESENTED -

Whether the county may pay a judge of a county court a salary which exceeds ninety percent of the salary being paid to district court judges on December 31, 1982, as additional compensation for administrative duties.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that the county may not pay a judge of a county court a salary which exceeds ninety percent of the salary being paid district judges on December 31, 1982, as additional compensation for administrative duties.

- ANALYSIS -

Section 27-07.1-04 of the North Dakota Century Code, effective January 1, 1983, provides that a county judge shall receive the same salary being paid judges of the county court of increased jurisdiction on December 31, 1982. Section 27-08-07.1, N.D.C.C., effective December 31, 1982, and repealed effective January 1, 1983, provides:

SALARIES OF JUDGES OF COUNTY COURTS OF INCREASED JURISDICTION - AMOUNT. The salary of a judge of a county court of increased jurisdiction:

1. Shall be equal to a minimum of eighty-five percent of the salary being paid to district court judges pursuant to section 27-05-03;
2. May be increased by a county or counties to ninety percent of the salary being paid to district court judges pursuant to section 27-05-03; and
3. Is not affected by, and may not be adjusted pursuant to, subsection 4 of section 11-10-10.

Section 27-05-03, N.D.C.C., provides:

27-05-03. SALARIES AND EXPENSES OF DISTRICT JUDGES. Each district judge of this state shall receive an annual salary commencing July 1, 1981, of forty-six thousand nine hundred dollars and commencing on July 1, 1982, of fifty thousand six hundred dollars and his actual travel expenses, which shall include mileage and subsistence while engaged in the discharge of his official duties outside the county in which his chambers are

located. Such salary and expenses shall be payable monthly in the manner provided by law.

Each district judge who has been appointed by the supreme court to act as presiding judge of a judicial district shall receive an additional one thousand two hundred dollars per annum.

Section 27-07.1-01, N.D.C.C., which allows the county commissioners to authorize additional county judges for the county and section 27-07.1-04, N.D.C.C., do not provide for a presiding judge of the county court. Therefore, on December 31, 1982, the salary of a judge of a county court of increased jurisdiction shall be equal to a minimum of eighty-five percent of the salary being paid to district court judges and may be increased by a county or counties to ninety percent of the salary being paid to district court judges. There is no provision to pay a county judge a salary in excess of ninety percent of the salary being paid to district court judges as the above-quoted section states that the salary of a judge of a county court of increased jurisdiction is not affected by, and may not be adjusted pursuant to section 11-10-10(4), N.D.C.C., which provides:

* * *

4. The salaries of the judges of county courts shall be as set out in section 27-07.1-04. 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 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. The salary of a county official shall not be reduced during his or her term of office. Any county official performing duties on less than a full-time basis may be paid a reduced salary set by the board of county commissioners. In the event the county has for its employees, a group insurance program for hospital benefits, medical benefits, or life insurance, or a group retirement program, financed in part or entirely by the county, such benefits may be in addition to the salaries payable to county officials.

* * *

Because a judge of a county court of increased jurisdiction could not receive a salary in excess of ninety percent of the salary paid to a district court judge on December 31, 1982, it is my opinion that a judge of a county court may not receive a salary in excess of ninety percent of the salary being paid to district court judges on December 31, 1982.

Section 27-08-08, N.D.C.C., which was not repealed until January 1, 1983, also prescribed the salaries of the judges of a county court of increased jurisdiction. I presume that it was the intent of the Legislature that the salary of a judge of a county court of increased jurisdiction on December 31, 1982, was to be the salary prescribed in section 27-08-07.1, N.D.C.C., effective December 31, 1982, and repealed January 1, 1983, for to find otherwise, would render the statute meaningless. Clearly, it was the intent of the Legislature to repeal section 27-08-08, N.D.C.C., on December 31, 1982, the date that section 27-08-07.1, N.D.C.C., became effective.

It should be noted that if section 27-05-03, N.D.C.C., is later amended to increase the salary of a district court judge, the salary of a county judge will not be increased from the salary being paid judges of the county court of increased jurisdiction on December 31, 1982, unless section 27-07.1-04, N.D.C.C., is also amended.

- EFFECT -

This opinion is issued pursuant to section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the question presented is decided by the courts.

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