

**LETTER OPINION**  
**93-L-222**

July 7, 1993

Mr. Earle R. Myers Jr.  
Richland County State's Attorney  
413 3rd Avenue North  
Wahpeton, ND 58075

Dear Mr. Myers:

Thank you for your May 11, 1993, letter asking whether benefits received by a county commissioner under a "cafeteria plan" are included within the North Dakota salary limitations applicable to county commissioners.

It has come to my attention that Richland County voters have approved a home rule charter under N.D.C.C. ch. 11-09.1, and that the charter was received by the North Dakota Secretary of State on July 6, 1993. Consequently, it appears Richland County is a home rule county. If its charter and the ordinances adopted by the county pursuant to the charter relate to your subject of inquiry, then the county home rule ordinances will supersede conflicting state law. See N.D.C.C. ?? 11-09.1-04 and 11-09.1-05.

N.D.C.C. ? 11-09.1-05(2) and (3) provide counties with home rule authority over finances and the powers, duties, and compensation of elected and appointed officials. Whether or not the county has charter and ordinance provisions concerning your subject of inquiry is a question of fact for the county to determine. If the charter and ordinance provisions do not cover your subject of inquiry, then the following discussion applies.

The salary limitation applicable to county commissioners is contained in N.D.C.C. ? 11-10-10(5) and is dependent on the population of the subject county. In addition to salary, that subsection allows for the payment of travel expenses as authorized in

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N.D.C.C. ? 11-10-15.

N.D.C.C. ? 11-10-14 declares that "the salaries fixed by this chapter shall be full compensation for all county officials, deputies, clerks, and assistants, respectively . . . ."

N.D.C.C. ? 11-10-10(4), in part, provides:

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.

A cafeteria plan is defined as a written plan under which:

- (A) all participants are employees, and
- (B) the participants may choose among 2 or more benefits consisting of cash and qualified benefits.

26 U.S.C. ? 125(d)(1).

Although numerous benefits could be offered pursuant to written cafeteria plans, only certain benefits may be provided to county commissioners without being considered under the North Dakota statutory limitations. The benefit programs authorized to be paid in addition to salary are limited to a group insurance program provided to county employees under which county commissioners are eligible to receive only hospital benefits, medical benefits, or life insurance, or a group retirement program. Other benefits may be provided a county commissioner under a cafeteria plan, including cash; however, the total of those payments or benefits and other compensation not part of the specific group insurance program or retirement program exclusions may not exceed the monetary limitation provided in N.D.C.C. ? 11-10-

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10(5).

Sincerely,

Heidi Heitkamp  
ATTORNEY GENERAL

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