

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 95-F-02

Date issued: February 3, 1995

Requested by: Lynn E. Erickson, Cavalier County State's Attorney

- QUESTIONS PRESENTED -

I.

Whether a board of county commissioners may increase the salary of a part-time county state's attorney, an elected official, at regular intervals, based solely on the length of time served in office.

II.

Whether a newly elected county state's attorney must be given the same salary as the newly elected county state's attorney's predecessor in office.

- ATTORNEY GENERAL'S OPINIONS -

I .

It is my opinion that a board of county commissioners may not increase the salary of a part-time county state's attorney, an elected official, at regular intervals, based solely on the length of time served in office; however, it may reset the salary at a future date after considering the factors in N.D.C.C. § 11-10-10.1.

II.

It is my opinion that a newly elected county state's attorney need not be given the same salary as the newly elected county state's attorney's predecessor in office.

- ANALYSES -

I.

N.D.C.C. § 11-10-10 states in pertinent part:

7. State's attorneys in counties having a population exceeding thirty-five thousand, or in other counties where the board of county commissioners has determined by

resolution that the state's attorney shall be full time and shall not be an attorney or counsel for any party except the state or county, shall receive forty-five thousand dollars, but the county may increase that amount up to the same salary as a county court judge. State's attorneys not considered full time shall receive an annual salary of at least forty-five percent of the minimum salary paid to a full-time state's attorney.

State law also provides:

It is the intent of the legislative assembly that the several boards of county commissioners shall exercise the responsibility of setting the salaries of county officials within the limits imposed by section 11-10-10. A board of county commissioners, in making a decision in regard to a county official's salary, should take into account the financial status of the county, the responsibilities of the position, and any other factors which the board may deem relevant in arriving at such decision.

N.D.C.C. § 11-10-10.1. Thus, the board of county commissioners sets the salary for the position of a part-time county state's attorney at some amount that at least equals forty-five percent of the minimum salary of a full-time state's attorney authorized by subsection 7 of N.D.C.C. § 11-10-10, after taking into consideration legislative intent as indicated in N.D.C.C. § 11-10-10.1.

Adjustments to the salary of a county official are also addressed in subsection 4 of N.D.C.C. § 11-10-10:

The board of county commissioners of any county may, by resolution, increase the salary of any full-time county official provided in this section, if, in the judgment of such board, by reason of duties performed, the official merits the increase. The salary of a county official may not be reduced during the official's 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.

N.D.C.C. § 11-10-10(4). These statutory provisions do not authorize automatic salary increases at regular intervals based solely on the length of time served in office. Indeed, there is no language in these statutes authorizing a salary increase for a part-time county official, although N.D.C.C.

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§ 11-10-10(4) does allow for a merit increase for a full-time county official. No specific time is set by statute for the board of county commissioners to readdress the salary of a part-time state's attorney. Therefore, it is my opinion that the board of county commissioners may reset the salary of a part-time state's attorney after taking "into account the financial status of the county, the responsibility of the position, and any other factors which the board may deem relevant in arriving at such decision." N.D.C.C. § 11-10-10.1. Therefore, it is my opinion that a board of county commissioners may not increase the salary of a part-time county state's attorney, an elected official, at regular intervals, based solely on the length of time served in office; however, it may reset the salary at a future date after considering the factors set out in N.D.C.C. § 11-10-10.1.

II.

As indicated above, the board of county commissioners sets the salary for the position of a part-time county state's attorney at some amount that falls within the parameters authorized by subsections 4 and 7 of N.D.C.C. § 11-10-10 and considering the factors set out in N.D.C.C. § 11-10-10.1. In 1981 N.D. Op. Att'y Gen. 377, 380 it was noted that "[s]ince the setting of the salary of the office of state's attorney involves the exercise of some discretion, there is no requirement that any person appointed to the office receive exactly the same salary as the person who previously held the office." When a new person is elected to the office of state's attorney, that person will receive the salary set by the board of county commissioners for the office of state's attorney. Since the setting of the salary for the newly elected state's attorney involves the exercise of discretion by the board of county commissioners and a consideration of the financial status of the county, the responsibilities of the position, and other relevant factors, the newly elected state's attorney would not necessarily receive the same amount of salary as the previous state's attorney. Thus, it is my opinion that the newly elected state's attorney would not have to be given the same salary as the state's attorney's predecessor in office.

- EFFECT -

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

Heidi Heitkamp
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