

**OPINION**  
**45-233**

June 19, 1945           (OPINION)

POULTRY

RE: North Dakota Improvement Board - Travelling Expenses

Re: North Dakota Poultry Improvement Board Activities -

Sections 4-1303 to 4-1314 Rev. Code of 1943

Your letter of June 19, asking a number of questions regarding your board, at hand. I will try to answer them in the order in which they are asked.

1. "Are board members entitled to their actual expenses in addition to \$5.00 per day remuneration?"

In my opinion, the answer to this question must be no. You will note that section 4-1307, after providing for a \$5.00 per diem for the performance of their duties and a mileage of five cents per mile, says:

The amounts herein specified shall be the only compensation allowable and shall be payable from the poultry improvement fund."

There is no provision in this section for any compensation for expenses. It is my opinion that such compensation is only allowable when the statute expressly provides for it. For instance, in section 43-0104, relating to the abstracters' board of examiners, the law provides for a per diem of \$5.00 "for each day he actually is engaged in the performance of the duties of his office" and mileage. Then the statute provides: "In addition thereto, he shall receive for expenses five dollars a day while absent from home."

With regard to the state board of architecture, section 43-0306, the statute provides: "The other members of the board shall receive five dollars per day for the time actually engaged in the meetings of the board and in traveling to and from said meetings, and also shall receive all legitimate and necessary traveling and hotel expenses incurred in attending such meetings."

With reference to the board of barber of examiners, the law provides: "Each member of said board shall receive six dollars per day for actual services and actual and necessary expense of travel, including five cents per mile for automobile travel and not to exceed four dollars per day for room and meals when away from home."

We could quote statutory provisions with reference to compensation of other statutory boards, but the ones given, we believe, are typical. From these, it seems to me, that the compensation must be strictly limited to that provided by the express terms of the statute. Clearly, some of these provide for a per diem while the board members are away from home; that is, while traveling to, as well as from a

meeting, and also while attending the meetings of the board.

Our Supreme Court has held in two cases with reference to the compensation of county commissioners, under laws which provided merely for a per diem while performing the duties of their office and a mileage allowance in traveling to and from the board meetings, that the commissioners were not entitled to a per diem for time taken to travel to and from the meetings and in both of those cases it was held that where the board members actually charged the county for and collected per diem for such extra time, they were subject to removal. The first of these cases is the case of State v. Richardson and Carroll, 16 N.D. 1; 109 N.W. 1026. This case was followed in another case involving county commissioners, under a like statutory provision for per diem and mileage, wherein it was held that a board of county commissioners has no right or authority to charge a per diem for time spent in going to and from meetings of the board; and that the charging of such a fee is ground for removal from office.

In this later case, Judge Goss said in his morning opinion:

It is noticeable that the statute allows a per diem charge while performing duties in office, and an allowance for traveling in attending board meetings. The right of the commissioner to charge per diem while en route to attend the official meetings of the board is dependent upon whether a commissioner, while so en route, is performing official duties. Manifestly, he is not. His commissioner duties begin with the convening of the board and continue so long as the board is in session, and no longer."

State v. Borstad, 27 N.D. 533; 147 N.W. 380.

2. "Are board members entitled to remuneration and actual expenses incurred in connection with the performance of their duties other than attendance at board meetings?"

It is my opinion that board members actually performing duties of their offices are entitled to the per diem of \$5.00 per day for the time actually engaged in the performance of their duties and the mileage as above referred to. They could not charge a per diem for the time required to go from home to the place of performance of the duties, or for the time in returning to their home. The per diem would apply only to the time actually engaged in the performance of their duties.

3. "Is it permissible for the board to take official action and receive remuneration for board meetings if held other than at Bismarck...?"

It is my opinion that if in the performance of the duties of the board, it is found convenient and necessary for the board to assemble and act in their official capacity at some place other than at Bismarck, they would have the right so to do, and would be entitled to per diem and mileage as above indicated. This, however, would apply only in special instances, since the statute clearly requires that ordinary meetings of the board should be held at Bismarck. When such occasions arise, it might be well and it probably would be well

for the board to take their final official action with reference to the matter considered at the meeting other than at Bismarck at their next subsequent meeting in Bismarck.

I trust that this answers your inquiry. If not, kindly communicate with us further.

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Attorney General