

**OPINION
45-71**

January 31, 1945 (OPINION)

COUNTY COMMISSIONERS

RE: Per Diem

Your letter of January 26 addressed to the Attorney General relative to the above entitled matter has been received and contents of same have been noted.

You call attention to section 11-1117 of the North Dakota Revised Code of 1943, which provides that each commissioner appointed to supervise, etc., the building and repairing of roads, bridges or other property shall receive as compensation for his services the sum of five dollars per day; while section 11-1010, subdivision 3, of the North Dakota Revised Code of 1943 provides that each commissioner is allowed the sum of six dollars per day while performing his duties in attending meetings of the board or when engaged in any other official duty.

The question submitted is whether or not this means that the county commissioner who has been appointed to supervise the repairing of a bridge can collect five dollars per day for such service, and in addition, six dollars per day on the theory that he is engaged in an official duty.

In the first place, I am satisfied that a county commissioner is not entitled to a double per diem; that is, five dollars and six dollars for the same day, even though he is engaged in the supervision of repairing or the building of a bridge. Section 11-1117 of the North Dakota Revised Code of 1943 was enacted by the Legislative Session of 1917, Chapter 129, and appeared in the Supplement as Section 1946b. There have been several amendments relative to the per diem and mileage of county commissioners since that time, the last amendment being in the Legislative Session of 1943. Sec. 3 of chapter 113 of the Laws of 1943 provides that "county commissioners shall be allowed the sum of six dollars per day and their actual traveling expenses, which expenses shall not exceed five cents per mile, necessary travel while performing their duties in attending meetings of the board, or when engaged in other official duties the same to be paid out of the general fund of the county * * *."

We are of the opinion that when a county commissioner has been designated to oversee and supervise the building or repairing of roads and bridges, he is in fact performing an official duty and, therefore, would be entitled to the per diem provided for county commissioners in section 11-1010 of the North Dakota Revised Code of 1943, which is six dollars per day. We are also of the opinion that section 1946b of the Supplement, which appears as section 11-1117 of the North Dakota Revised Code of 1943, was repealed by necessary implication by chapter 113 of the Session Laws of 1943, which is section 11-1010 in the North Dakota Revised Code of 1943. Although section 1946b of the Supplement is carried in the 1943 Revised Code as section 11-1117, we believe it is of no effect because of the

saving clause in section 1-0233 of the North Dakota Revised Code of 1943 (page 53, Volume 1, 1-0223--should be 1-0233), which reads as follows:

"Statutes Which Shall Be Deemed Subsequent to Code. Any statute other than this code, whether enacted to the 1943 session of the legislative assembly or thereafter, shall be deemed to have been enacted subsequently to the enactment of this code. If any such statute repeals, amends, or is inconsistent with any provision of this code, the provisions of such statute shall prevail."

It is our opinion, therefore, that a county commissioner is entitled to six dollars per day as provided by section 11-1010 of the North Dakota Revised Code of 1943, whether he is in attendance at the regular or special meeting of the board, or whether he is supervising the repairing or building of a bridge, since in either case he is engaged in the performance of an official duty.

NELS G. JOHNSON

Attorney General