

OPINION
47-246

April 28, 1947 (OPINION)

WORKMEN'S COMPENSATION

RE: Salaries

This office is in receipt of your letter of April 28, in which you ask for the opinion of this office on the following proposition:

Chapter 264 of the Session Laws of 1945, which amends section 65-0202 of the North Dakota Revised Code of 1943, provides as follows:

"Before commencing to perform his duties, each commissioner (members of Workmen's Compensation Bureau) shall file an oath of office in the usual form and shall be bonded by the State Bonding department in the sum of five thousand dollars for the faithful discharge of his duties as such commissioner and the proper accounting for all moneys received by him as such officer. Each commissioner shall receive a salary of three thousand dollars per year."

However, chapter 142 of the Session Laws of 1945, which is the appropriation bill for the Workmens Compensation Bureau for the biennium beginning July 1, 1945, and ending June 30, 1947, makes an appropriation which will allow the commissioners a salary of \$2,600.00 a year, and the question now is, are they entitled to \$3,000.00 a year, and if so, out of what fund must it be paid?

Chapter 142 of the Session Laws of 1945 makes the appropriation for the Workmens Compensation Bureau for the biennium from any moneys in the state treasury not otherwise appropriated for the payment of salaries of the members of the Bureau. The amount appropriated for salaries of the members of the Bureau is \$15,600.00, which will be at the rate of \$2,600.00 a year. This appropriation is now exhausted and the question, therefore, is as to whether or not the commissioners are entitled to the salaries fixed by chapter 264, which is \$3,000.00 per year.

Our Supreme Court has repeatedly held that where an act creating an office provides that the incumbent of the office created shall receive a certain salary fixed by the act, that this constitutes not only a legislative declaration as to the amount of the salary to be paid, but also an appropriation of the amount so fixed.

State ex rel. Coghlan v. Poindexter, 49 N.D. 201,

State ex rel. Packard v. Jorgenson, 31 N.D. 563,

State ex rel. Wallace v. Jorgenson, 34 N.D. 527.

We find a situation analogous to this one in the case of State ex rel. Coghlan v. Poindexter, supra. In 1919 the Legislature provided for the appointment by the Supreme Court of an officer to be known as

Supreme Court reporter, state law librarian and legislative librarian, and prescribed his duties, and fixed his salary at \$2,500.00 per year. In the general appropriation bill enacted by the Legislature in 1921 the amount appropriated for his salary was at the rate of \$2,000.00 per annum. The question arose as to whether the appropriation bill of 1921 operated as an implied repeal or amendment of the law of 1919 creating the office. The Supreme Court held that it did not and that this officer was entitled to a salary of \$2,500.00 a year, notwithstanding the fact that the Legislature of 1921 appropriated only \$2,000.00 per year. The general rule is, therefore, that where the Legislature creates an office and fixes the compensation to be paid, the incumbent is entitled to the salary fixed by the statute creating it and not by an appropriation.

It is, therefore, the opinion of this office that since the appropriation made by the legislative assembly of 1945 for the salaries of the commissioners of the Workmens Compensation Bureau is exhausted, that they are entitled to payment out of any money in the state treasury in the Workmens Compensation Fund not otherwise appropriated, for any deficiency to which they are entitled under chapter 264 of the Session Laws of 1945.

It should be observed that the appropriation as made by chapter 142 was approved on March 10, 1945, whereas, the statute fixing they salary at \$3,000.00 per annum was approved four days later, to-wit, March 14, 1945, and if there should be a conflict, the law last approved would prevail.

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