

**OPINION  
49-30**

April 8, 1949

COUNTIES - Commissioners - Per Diem and Expenses

Your letter of April 6 addressed to the Attorney General has been received and contents noted.

You ask for our opinion relative to Senate Bill 208 and House Bill 228 enacted by the recent legislative assembly.

Senate Bill 208 provides that the county commissioners in each county shall be allowed the sum of \$7.00 per day while performing the duties of their office and actual traveling expenses and living expenses as otherwise provided by law. The total compensation and expenses, including per diem, board and lodging and transportation expense received by any member of the board of county commissioners in any county having a population of 8,000 or less shall not exceed \$1200.00 per annum.

This law is to be in effect for the years 1949, 1950, 1951 and 1952 and provides that it is not a repeal of section 11-1010 of the North Dakota Revised Code of 1943, but shall be construed as authorizing additional compensation during the current years of 1949, 1950, 1951 and 1952 and those years only.

Our construction of this statute is that during the years enumerated, the operation of section 11-1010 is suspended and that Senate Bill 208 expires at the end of 1952 by its own limitation.

House Bill 228 is permanent and amends section 11-1015 of the North Dakota Revised Code of 1943. It provides that unless otherwise provided by the laws of this state every county official whether elective or appointive and every deputy of a county official entitled by law to travel or mileage expenses shall be allowed or paid only the following amounts for each mile actually and necessarily traveled in the performance of official duties;

1.       \*\*\*
2.       Seven and one-half cents per mile when such travel is by motor vehicle;
3.       \*\*\*

Both of these statutes were emergency measures.

Chapter 127 of the Session Laws of 1947 provides that a county commissioner shall receive his actual transportation expenses not in excess of the amounts provided by section 54-0609 of the North Dakota Revised Code of 1943 while performing his duties in attending meetings of the board of county commissioners of which he is a member or when engaged in other official duties.

Section 54-0609 was amended by House Bill 28 of the recent Legislative Assembly and this bill provides, among other things, that the mileage allowed shall be at the rate of 7½ cents per mile for each mile actually and necessarily traveled within the state in the performance of official duty when such travel is by motor vehicle, private airplane or by team, but when

any such motor vehicle, airplane or team is owned by the state or by any department or political subdivision, no allowance shall be made or paid for such mileage. This bill was also passed with an emergency.

Since, under the provisions of chapter 127 of the Session Laws of 1947, the commissioners are entitled to mileage fixed by section 54-0609 and since said section, as amended by House Bill 208, fixes the mileage at 7½ cents per mile, it follows that the county commissioners are entitled to charge and receive 7½ cents per mile when traveling in their own cars.