

OPINION
50-49

April 12, 1950 (OPINION)

ELECTIONS

RE: No additional Compensation for Those Making Return to City Auditor

I am in receipt of your letter of April 10, 1950, in which you ask whether or not section 16-1307, N.D.R.C. 1943, applies to city elections in respect to the compensation payable for returning the reports of the election, ballots, etc.

Section 16-1307 N.D.R.C. 1943, provides:

Within three days after an election, the inspector of elections, or one of the judges appointed by him, shall deliver, either in person or by registered mail, the duplicate reports, provided for in section 16-1304 to the county auditor. Such reports, carefully sealed under cover, accompanied with a poll list, and with the oaths of inspector and clerks affixed thereto, shall be directed properly to the county auditor. The person making such return shall receive the sum of two dollars as compensation therefor, and such sum shall be paid out of the county treasury on a warrant of the county auditor. Such sum shall be full compensation for returning all used or voided ballots and for delivering the ballot boxes to the proper official. Any person violating any of the provisions of this section is guilty of a misdemeanor."

Section 42-2112 N.D.R.C. 1943, provides:

The ballots cast in a municipal election shall be counted and the returns of the election prepared by the election board immediately after the closing of the polls. The ballots and the returns of the election shall be returned to the city auditor or village clerk, as the case may be, under seal within two days after the election. Thereafter, the governing body of the municipality shall canvass the returns and declare the result of the election and cause a statement thereof to be entered in its books of minutes."

Section 40-2105 of the 1949 Supplement provides:

Each inspector, judge, or clerk of any regular or special municipal election, for services performed at such election, shall receive as compensation therefor the sum of six dollars. When the number of votes cast at such election exceeds one hundred, such officer shall receive one dollar for each additional one hundred votes cast or major fraction thereof."

Section 40-2112 N.D.R.C. 1943 contains a provision relating to the return of ballots to the city auditor and is similar in this regard to section 16-1307. Section 40-2112 does not provide that the city auditor shall pay compensation to the person making the return, as does section 16-1307.

It is true that section 40-2113 N.D.R.C. 1943 provides that:

The manner of conducting, voting at, keeping poll lists, and canvassing votes at municipal elections, and contests of the results of such elections shall be governed, as nearly as possible and except as otherwise provided in this chapter, by the laws of this state applicable to elections and contests in the case of county offices."

This section serves to incorporate the applicable provisions of Title 16 into the municipal election law (and if applicable, section 16-1307).

However, inasmuch as section 40-2105 of the 1949 Supplement, supra, provides for the compensation of inspectors, judges and clerks "for services performed at such municipal election," it is the opinion of this office that the person making the return of the election and the ballots to the city auditor is not entitled to the additional compensation provided for in section 16-1307.

WALLACE E. WARNER

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