

OPINION
51-36

April 26, 1951 (OPINION)

COUNTIES

RE: Limitation on Compensation of Commissioners

Your letter of April 18, 1951, addressed to the attorney general, has been received.

A part of section 11-10104 of the 1949 Supplement provides:

* * *The total compensation and expense (allowed to county commissioners for the calendar years 1949, 1950, 1951, and 1952), 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 eight thousand or less shall not exceed twelve hundred dollars per annum during such years. * * *

You state that your county's population was listed as a little over 8,300 persons in 1949, when section 11 10104 of the 1949 Supplement became effective. You state that the 1950 preliminary census figure lists Dunn County's population as a little over 7,200. We have been notified that the official 1950 census figure lists Dunn County with a population of 7,212.

You would like to know whether the county commissioners of Dunn County do now come within the "maximum restriction quoted."

We note that section 11-10102 of the 1949 Supplement to the North Dakota Revised Code of 1943, which authorized additional compensation for certain county officers, in subsection 7, makes a definite reference to the United States government census of 1940.

The section providing for compensation and expense of county commissioners does not contain such a provision.

Section 40-1304 of the North Dakota Revised Code of 1943 prohibits the diminution of the salary of a municipal officer during his term. Section 99 of the Constitution of North Dakota has a similar provision in relation to judges, and section 84 of our Constitution likewise sets up such prohibition concerning the listed state officers. However, there is no constitutional or statutory provision which would prohibit such diminution of salary of county commissioners. It might be contended that such restriction is not a diminution of salary but merely sets out an allowable maximum in relation to the county's population.

Section 1-0147 of the North Dakota Revised Code of 1943 states:

The term 'population' shall mean the number of inhabitants as determined by the last preceding state or federal census."

The last preceding census was the 1950 federal census. The official release of the bureau of census in Washington shows that Dunn County, at the taking of the census, did have a population of 8,000 or less.

Therefore, it is our opinion that the quoted portion of section 11-10104 of the 1949 Supplement does apply, and that the compensation and expense of the county commissioners of your county shall not exceed twelve hundred dollars per annum during the year 1951 and 1952, as provided by the quoted statute.

ELMO T. CHRISTIANSON

Attorney General