

**OPINION
70-93**

January 16, 1970(OPINION)

Mr. Thomas E. Rutten
Assistant State's Attorney
Ramsey County

RE: Counties - County Commissioners - Expense Allowances

This is in response to your letter in which you ask if Section 11-10-10 or Section 44-08-04 of the North Dakota Century Code controls and regulates the allowances for meals and lodging to county commissioners in the performance and discharge of their official duties.

Section 44-08-04 of the North Dakota Century Code was amended by Chapter 399 of the 1969 Session Laws. The title to Senate Bill No. 52, the instrument by which the section was amended, is as follows: "To amend and reenact Sections 44-08-04 and 54-06-09 of the North Dakota Century Code, relating to the expense accounts and mileage and travel expenses of state officers and employees." The title evidences an intent that the amendment was not to override any other provision.

In addition to this, we find that Section 11-10-10 was amended by Chapter 129 of the 1969 Session Laws. The 1969 amendment does not touch specifically upon the allowances to the county commissioners but what is more important is that the provisions relating to the county commissioners remained unchanged. Because Section 11-10-10 relates specifically to county commissioners and the amounts they may recover for travel and other expenses, such section must be considered a special provision, whereas Section 44-08-04 is a general provision.

Section 1-02-07 of the North Dakota Century Code, in substance, provides that if a general and special law are irreconcilable the special law prevails, unless there is a manifest legislative intent that the general statute should prevail.

In reviewing the pertinent amendments relating to both sections, we are unable to find any legislative intent which would indicate that the general statute should prevail. There is every indication that the Legislature did not intend to repeal or amend Section 11-10-10 by the amendment to Section 44-08-04. This compels the conclusion that Section 11-10-10 controls and regulates the allowances to county commissioners for meals, lodging, travel and expenses.

It is, therefore, our opinion that Section 11-10-10 of the North Dakota Century Code governs the amount or amounts that a county commissioner may charge for meals and lodging in performing official duties for the county.

We would also note that Section 11-10-10 sets forth the per diem which county commissioners may charge per day for performing duties. If Section 44-08-04 were to be construed as amending Section 11-10-10, it would give rise to the question whether or not the per diem allowance would be available.

HELGI JOHANNESON
Attorney General