

**OPINION
64-44**

January 17, 1964 (OPINION)

CITIES

RE: Commissioners - Expenditures

This is in response to your letter in which you ask for an opinion on the following questions:

1. May the City Commissioners have an expense account, as well as their salary, for entertainment purposes?
2. May the City Commissioners hold dinner committee meetings and pick up the tab?
3. Are the City Commissioners, approving vouchers for travel expenses, bound by section 44-08-04 which states ten dollars for any one day for actual expenses of meals and lodging? (Even if actual expense is over the allotted amount and the expense is occurred while on city business?)
4. Under 40-16-06, the City Auditor is required to endorse his approval upon any claim which he finds correct. If he disapproves and reports his reasons to the governing body and the governing body approves the claim without adjustment, is the auditor obligated to endorse the claim and if so wouldn't the auditor be duly guilty if he feels that the claim is incorrect or is the approval of a claim by the governing body final and releases the auditor even though his signature is on the voucher?"

The City Commissioners are to a great extent, as is material to the questions submitted, governed by the following provisions of law.

Section 44-08-04 of the North Dakota Century Code provides that "No elective or appointive officer, employee, representative, or agent of this state, or of any of its subdivisions, agencies, bureaus, boards, or commissions shall make claim upon any public fund for any sum in excess of ten dollars for any one day for actual expenses of meals and lodging while engaged in the discharge of a public duty and while upon a public expense account within the state,* * * *."

Section 44-08-03 of the North Dakota Century Code provides that "No elective or appointive officer, employee, representative, or agent of this state, or of any of its subdivisions, agencies, bureaus, boards, or commissions shall make claim upon any public funds for traveling expenses, while engaged upon public business, in an amount in excess of that allowed by law for such travel.* * * *"

The phrase, "in excess of that allowed by law for such travel", obviously refers to section 44-08-04.

Section 44-08-05 of the North Dakota Century Code sets forth the penalty providing "Any person violating any of the provisions of Sections 44-08-03 and 44-08-04 is guilty of a felony and shall be punished by a fine of not less than fifty dollars nor more than one thousand dollars, or by imprisonment in a county jail for not less than ninety days nor more than one year, or by imprisonment in the penitentiary for not more than five years, or by both such fine and imprisonment."

Section 40-13-04 of the North Dakota Century Code provides that "Except where otherwise provided in this code, any officer or employee of a municipality shall receive the salary, fees, or other compensation fixed by ordinance or resolution, and after having been once fixed, the same shall not be diminished to take effect during the term for which the officer was elected or appointed."

Section 40-01-12 of the North Dakota Century Code describes the manner in which claims are to be submitted against a municipality and provides that such claim shall be in the manner and form set out in section 54-14-04.

Based on the foregoing sections of law, it is our opinion that the City Commissioners may not have an expense account in addition to their salary for entertainment purposes. Our answer to your first question is in the negative.

It is our further opinion that the City Commissioners may not hold dinner committee meetings and pick up the tabs. Our answer to your second question therefore is also in the negative. We are assuming here that the committee meeting is held in the city.

It is our opinion that section 44-08-04 of the North Dakota Century Code applies to officials of the cities. The term "subdivisions" is a broad term and in this sense includes officials of cities.

In response to your fourth question, we are of the opinion that the city auditor under section 40-16-06 is not required to endorse a claim against a city fund if he finds that same is not properly identified and correct, or where he determines that they were not incurred by proper authority. If he disapproves of any claim he must give his reasons therefor and submit the same to the governing body. The action of the governing body is then controlling. A further approval by the city auditor or endorsement by him is not necessary where the claim was accepted by the governing body.

HELGI JOHANNESON

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