

## **N.D.A.G. Letter to Koppy (April 6, 1992)**

April 6, 1992

Mr. Allen Koppy  
Morton County State's Attorney  
210 Second Avenue NW  
Mandan, ND 58554

Dear Mr. Koppy:

Thank you for your January 14, 1992, letter regarding the effective date of Senate Bill No. 2484, passed in the 1991 legislative session, which enables an increase in the salaries of county commissioners and requires an increase in certain other county officials' salaries.

The relevant language in N.D.C.C. § 11-10-10, as amended by Senate Bill No. 2484, states:

5. Each county commissioner may receive an annual salary or per diem as provided by resolution of the board, with a maximum of ten thousand dollars in counties with a population in excess of ten thousand and a maximum of nine thousand three hundred dollars in counties with a population of ten thousand or less. . . .

If a board shall resolve to pay an annual salary pursuant to this subsection, it must be paid in monthly installments.

N.D.C.C. § 11-10-10(5). The increase in the maximum for the annual salaries for county commissioners described in subsection 5 of N.D.C.C. § 11-10-10 above became effective on January 1, 1992, as provided in section 2 of Senate Bill No. 2484.

In light of the January 1, 1992, effective date, you ask whether it was proper for the board of county commissioners (hereafter, board) to adopt a resolution to receive the increased salary in 1992, on October 1, 1991, when it resolved to adopt its entire 1992 budget.

A statute is not retroactive unless the legislature expressly declares it to be retroactive. N.D.C.C. § 1-02-10. Given its January 1, 1992, effective date, readliterally, N.D.C.C. § 11-10-10(5) would require that the resolution of the board increasing its members' salaries must be adopted after January 1, 1992. N.D.C.C. § 1-02-10, however, "is not an end in itself. . . . [I]t is subservient to the goal of statutory interpretation: to ascertain and effectuate legislative intent." State v. Cummings, 386 N.W.2d 468, 471 (N.D. 1986).

In determining legislative intent, one may look to the object sought to be attained. N.D.C.C. § 1-02-39(1). By making the salary changes effective on January 1, 1992, it is

reasonable to conclude that the legislature intended that the county officials could receive the new salaries during the 1992 fiscal year. Boards are required to determine the amount of taxes to be levied for the ensuing fiscal year on or before October 1 of each year. N.D.C.C. § 11-23-05. One consideration in determining the amount of taxes to be levied is the amount of money needed to pay salaries. Thus, if the legislature intended the salaries in Senate Bill No. 2484 to be effective after January 1, 1992, the resolution would have to be adopted by the board on or before the preceding October 1, as required by N.D.C.C. § 11-23-05.

Given the foregoing analysis, it is my opinion that a resolution increasing county commissioners' salaries for the 1992 fiscal year, adopted by a board of county commissioners on October 1, 1991, is in accordance with Senate Bill No. 2484. It is my further opinion that this procedure does not violate the January 1, 1992, effective date of the statute.

I trust this responds to your question.

Sincerely,

Nicholas J. Spaeth

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