

**OPINION
67-30**

July 26, 1967 (OPINION)

Mr. J. Howard Stormon

City Attorney

Rolla, North Dakota

RE: Cities - Penalties - Credit for Hard Labor

This is in reply to your letter of July 18, 1967, in which you state the following facts and questions:

I note that Chapter 113 of the 1967 Session Laws purports to amend Section 40-18-12, specifying a credit of \$5.00 per day for hard labor on municipal fines and costs. I notice that Section 129 of Chapter 323 of the 1967 Session Laws purports to amend the same section, allowing a credit of only \$1.25 per day for such hard labor.

Chapter 113 was apparently approved March 4, 1967, and Chapter 323 was apparently approved March 15, 1967.

Will you please give your opinion on which of these sections should be followed by the municipal judge."

Section 40-18-12 of the North Dakota Century Code, as amended by section 2 of Chapter 113 of the 1967 Session Laws, provides:

COMMITMENT FOR VIOLATION OF CITY OR VILLAGE ORDINANCE - LIMITATION - LABOR IN LIEU OF FINE. If the defendant is found guilty of the violation of a municipal ordinance and is committed as is provided in section 40-11-12, the term of his imprisonment shall not exceed three months for any one offense. The governing body may provide by ordinance that each person so committed shall be required to work for the municipality at such labor as his strength will permit, not exceeding ten hours in each working day, and for such work the person so imprisoned shall be allowed for each day, exclusive of his board, five dollars on account of the fines and costs assessed against him."

Prior to this amendment by the 1967 Legislature the statute provided for an allowance of one dollar and twenty-five cents per day.

The only amendment to this section made by Chapter 323 of the 1967 Session Laws was to remove the term "village" from the title of the section.

As you have noted in your letter, Senate Bill 46 (Chapter 323 1967 SL) was approved by the Governor on March 15, 1967, while House Bill 720 (Chapter 113, 1967 SL) was approved March 4, 1967. However, final passage of the bills by the Legislature occurred on Tuesday, February 21, 1967, in both instances. Furthermore, it appears that

House Bill 720 was finally approved subsequent to Senate Bill 46. See pages 669 and 679 of the 1967 Senate Journal. Therefore, if we are going to determine which of the bills prevails, with respect to section 40-18-12, it would appear that the provisions of House Bill 720, since it was later in enactment, would supersede the provisions of Senate Bill 46. See section 1-02-09 of the North Dakota Century Code which provides:

IRRECONCILABLE STATUTES PASSED DURING THE SAME SESSION.

Whenever the provisions of two or more statutes passed during the same session of the legislative assembly are irreconcilable, the statute latest in date of final passage by the legislative assembly, irrespective of its effective date, shall prevail from the time it becomes effective."

It does not, however, appear necessary to rely on the time of enactment alone in determining the effect of these bills on section 40-12-12. The title to House Bill 720 reads as follows: "To amend and reenact sections 12-44-33 and 40-18-12 of the North Dakota Century Code, relating to the performance of hard labor by convicts and the discounting of fines and judgments because of such hard labor." It is obvious from an examination of this bill that its sole purpose was to increase the amount to be credited on any judgment for fines and costs against a defendant, by reason of his labor, from one dollar and twenty-five cents to five dollars per day. On the other hand, Senate Bill 46 was a product of the Legislative Research Committee. Its purpose was to abolish the village form of government and require all municipalities operating under that form of government to commence operations as a council city on July 1, 1967. The sole and obvious purpose of the amendment to section 40-18-12 in this bill was to remove the term "village" from the title of the statute as was done with most of the sections amended by this bill.

The basic rule of statutory construction is to construe the statute in accordance with the intent of the Legislature. The other rules of statutory construction are mere aids to achieve this end. There can be no doubt of the intentions of the Legislature with respect to section 40-18-12. They intended to increase the amount to be credited against a judgment for fines and cost by reason of the labor of the defendant from one dollar twenty-five cents to five dollars per day and to remove the term "village" from the statute. These intentions are in no manner contradictory and the two bills can be construed together without, in any manner, affecting the legislative intent of either bill. In fact, the two bills must be construed together to arrive at the full intent of the Legislature.

Section 40-18-12 of the North Dakota Century Code, as amended by Chapter 113 and 323 of the 1967 Session Laws, would therefore read:

COMMITMENT FOR VIOLATION OF CITY ORDINANCE - LIMITATION - LABOR IN LIEU OF FINE. If the defendant is found guilty of the violation of a municipal ordinance and is committed as is provided in section 40-11-12, the term of his imprisonment shall not exceed three months for any one offense. The governing body may provide by ordinance that each person so committed shall be required to work for the municipality at such labor as his strength will permit, not exceeding ten hours

in each working day, and for such work the person so imprisoned shall be allowed for each day, exclusive of his board, five dollars on account of the fines and costs assessed against him."

It is our understanding the provision will appear in this form in the pocket part supplement to the North Dakota Century Code.

It is our opinion, therefore, that the amount to be credited against a judgment for fines and costs, by reason of the labor of the defendant, is five dollars per day.

HELGI JOHANNESON

Attorney General