

**OPINION
69-350**

January 22, 1969 (OPINION)

Honorable Richard F. Larsen

Lieutenant Governor

Forty-first Legislative Assembly

RE: State - Lieutenant Governor - Expenses

This is in response to your letter in which you ask for a ruling from this office whether or not you may use the line item appropriation entitled "Fees and Services" in the Lieutenant Governor's budget to cover per diem expenses. You also mention that the Lieutenant Governor does not participate or receive a regular expense account allowed to members of the Legislature. You then ask if you can file a regular expense voucher for expenses incurred while you are away from your home and while you are residing in Bismarck and serving as President of the Senate. You also ask what is the amount you may receive if you are entitled to be reimbursed for the necessary expenses incurred while presiding over the Senate. You further observe that the present appropriation in line item entitled "Fees and Services" in the Lieutenant Governor's budget would not be sufficient to provide for the normal expenditures during the present Legislative Assembly.

To resolve the question presented, it becomes necessary to determine whether or not the Lieutenant Governor clearly comes within the executive branch of government or the legislative branch of government. This question becomes important because our form of government, pursuant to the North Dakota Constitution, consists of three separate, co-equal branches of government. Section 72 of the North Dakota Constitution provides that the Lieutenant Governor is to be elected at the same time as the Governor, and the obvious inference is that he is to be elected by all the electors of the State. This section also provides that the Lieutenant Governor is to assume the duties of the Governor under certain conditions, such as resignation, death, etc. However, Section 74 of the North Dakota Constitution specifically provides that the Lieutenant Governor shall be elected by all of the electors of the State. Section 77 of the North Dakota Constitution, as is material here, provides that the Lieutenant Governor shall be President of the Senate but shall have no vote unless they be equally divided. Section 54-08-01 of the North Dakota Century Code provides that the duties of the Lieutenant Governor shall be those prescribed in the Constitution of this State. These basically are the statutory and constitutional provisions relating to the Office of Lieutenant Governor.

It should be significantly noted that under Section 25 of the North Dakota Constitution the legislative power of this State is vested in a legislature consisting of a Senate and a House of Representatives. The same provision also reserves certain powers to the people. Nowhere in the Constitution do we find that the Lieutenant Governor is a part of either the Senate or the House, as a legislative body.

The only connection we are able to find is that the Lieutenant Governor presides over the Senate.

It is also significant to note that the constitutional provisions relating to the Lieutenant Governor are found under the major heading "Article III, Executive Department." While this is not conclusive, it evinces a strong intent of the framers of the Constitution that the Lieutenant Governor was to be a member of the executive branch of government. This, coupled with the other constitutional provisions, specifically Section 25, compels the conclusion that the Lieutenant Governor is a member of the executive branch of government. It has been determined judicially in the cases of *Rouse v. Johnson*, 28 S.W.2d. 745 (70 A.L.R. 1077) (Ky.) and in *Bynum v. Strain*, 218 Pac. 883, (Okla.).

Having reached the conclusion that the Lieutenant Governor is a member of the executive branch of government, we now must examine the statutory provisions pertaining to travel expense and living expenses incurred in performing official duties.

Section 44-08-04, as amended, of the North Dakota Century Code, sets forth the manner and amounts in which elective or appointive officers, employees, representatives, or agents of this State may make claim and be reimbursed. Under the present provisions, the maximum amount is limited to \$12.00 per day. It should be noted that the allowances are for meals and lodging "* * * while engaged within this state in the discharge of a public duty away from his normal work and living residence." It is a conjunctive condition, including both being away from the normal working residence and living residence. In this respect, it is observed that neither the constitutional provisions require the Lieutenant Governor to reside at the State Capitol, whereas Section 71 of the Constitution requires that the Governor shall reside at the seat of government. We are assuming that your living residence is, and remains at the present time, in Grand Forks, North Dakota.

Section 54-06-09, as amended, of the North Dakota Century Code, authorizes reimbursement for State officers and employees for official travel at the rate of 8-1/2 cents per mile actually and necessarily traveled in the performance of their official duties.

We also observe that the Lieutenant Governor does not receive an unvouchered expense account as do the members of the Legislature.

It is, therefore, our opinion that the Lieutenant Governor is entitled to be reimbursed in accordance with the provisions of Sections 44-08-04 and 54-06-09, as amended, of the North Dakota Century Code, for expenses incurred in performing official duties.

It is our further opinion that the appropriation in line items "Fees and Services" in the Lieutenant Governor's budget may be used to pay such expenses and mileage accounts.

If the appropriation in "Fees and Services" is not adequate, it would be necessary to either apply to the contingency fund or ask the Legislature for an additional appropriation (deficiency appropriation).

In submitting a claim for the expenses incurred and as allowed pursuant to the statutory provisions, it will be necessary to submit the proper vouchers in the same manner as other State officers or employees are required to submit them in order to receive the reimbursement.

HELGI JOHANNESON

Attorney General