

LEGISLATURE: Expenses - Election contest costs.
Primary and General elections

March 7, 1955

280-E

Honorable Archie Miller, Chairman
Committee on Rules and Legislative Expenses
State Senate
CAPITOL

Dear Sir:

On February 18 we rendered you an opinion on the right of the Senate to pay election contest costs in full or in part incurred by an elected senator and arising out of a contest in a primary or general election. It has since been called to our attention that the Senate desires further clarification as to the powers it possesses to pay election contest costs.

We believe that it is within the power of the legislature to pass an appropriation bill designed to create a fund with which to pay the expenses of the legislature and its members. E. g. L. 1953, c. 741. The Legislative Expense Fund is such a fund. The payment from the sum so appropriated of expenses to legislators does not constitute "compensation", and, therefore, does not violate Minn. Const. Art. IV, Sec. 7, which reads as follows:

"The compensation of senators and representatives shall be three dollars per diem during the first session, but may afterwards be prescribed by law. But no increase of compensation shall be prescribed which shall take effect during the period for which the members of the existing House of Representatives may have been elected."

McCoy v. Handlin, 35 S. D. 487, 153 N. W. 361;
Kirkwood v. Soto, 87 Cal. 394, 24 Pac. 488;
Scroggie v. Scarborough, 162 S. C. 218, 160 S. E. 596;
State ex rel. Weldon v. Thomason, 142 Tenn. 527,
221 S. W. 491;

Honorable Archie Miller -- 2.

March 7, 1955

106 A. L. R. 779;
5 A. L. R. 2d 1182, and cases cited therein.

It is within the power of the legislature to determine that sums expended by its members in an election contest are expenses which can be paid out of the Legislative Expense Fund.

The administration of the business affairs of the legislature and each branch thereof, including the payment of moneys out of the Legislative Expense Fund, is a matter relating to its internal management. It is always to be presumed that the legislature, including each branch thereof, acts in good faith; and a declaration of the legislature is ordinarily a conclusive finding of fact which cannot be impugned by members of the other branches of government. Gustafson v. Holm, 232 Minn. 118, 44 N. W. 2d 443; Geo. Benz Sons, Inc. v. Ericson, 227 Minn. 1, 34 N. W. 2d 725. Opinion of the Attorney General, File 9-a-23, April 9, 1936, copy of which is attached hereto.

Since 1911 the Senate has paid expenses incurred by elected senators in general election contests. See attached excerpts from the Journal of the Senate.

We see no valid legal basis for distinguishing between the expenses incurred by an elected senator in a primary election contest and those incurred in a general election contest. If the Senate determines it advisable to extend the policy heretofore and now practiced in respect to general election contests to primary election contests, we see no valid legal objection to such extension.

Very truly yours

MILES LOED
Attorney General

ROBERT LATZ
Special Assistant Attorney General

RL-sm
Enc.