

N.D.A.G. Letter to Wold (July 22, 1987)

July 22, 1987

Mr. James W. Wold
Griggs County State's Attorney
P.O. Box 541
Cooperstown, ND 58425

Dear Mr. Wold:

Thank you for your letter of June 24, 1987, inquiring whether full time elected county officials may be appointed by the board of county commissioners to a part time position for which compensation is paid by the county. Your secondary question is whether such persons may receive additional compensation for serving in that part time position in addition to the salary received as a result of their elected position. We assume that your letter does not inquire as to the propriety of such appointments where the elected county officials involved do not wish to accept the appointment. Instead, we assume your questions concern the ability to have such appointments made at all.

A review of the statutes contained in N.D.C.C. chs. 11-10 and 11-11 has failed to reveal any discussion of county officials in possession of more than one county office at one time. Such prohibitions are in place with respect to city officials. N.D.C.C. §§ 40-08-09, 40-09-17. It would appear that the Legislature has not extended the prohibition of holding multiple public offices currently applicable to city officials to county officials.

Your letter inquires as to the applicability of N.D.C.C. § 11-10-14. This particular statute states that the salaries received by county officials, clerks, and assistants are considered to be full compensation for those persons. The statute continues to state that all fees and compensation received by such officials for acts or services rendered in their official capacity shall be accounted for and paid over to the county treasurer and credited to the general fund of the county. Clearly, the statute attempts to prevent county officials from retaining fees and moneys which they may receive beyond their compensation in performing the duties for which North Dakota law has previously established the salary of such officials.

There is nothing in this statute, however, which prevents a county official from performing the job of another position separate and apart from the position for which they were elected or appointed. Thus, we see no prohibition contained within the statute preventing a sheriff, for example, from being appointed as a disaster emergency manager and receiving a separate salary for the services performed as a disaster emergency manager. In performing the duties of a disaster emergency manager, the official is performing duties not part of the office for which the person was elected or appointed and for which the salary has been established. It would be absurd to conclude that persons elected to offices, the salaries of which have been established by law, may not perform additional

duties or undertake supplemental responsibilities on behalf of the county in unrelated areas when permitted by law to do so and not receive compensation for those duties and responsibilities.

However, there is a settled rule of common law that a public officer cannot hold two incompatible offices at the same time. The doctrine of incompatibility prevents a person from simultaneously holding two public offices where the functions of the two offices are inherently inconsistent, as where there are conflicting interests or where the nature and duties of the two offices are such as to render it improper from considerations of public policy for one person to retain both. The doctrine of incompatible offices is recognized in North Dakota. Tarpo v. Bowman Public School District #1, 232 N.W.2d 67 (N.D. 1975).

The common law rule as to incompatibility operates, however, only with respect to natural incompatibility. Where two offices operate in different spheres so that one is not subordinate to the other or subject to its supervision or control, no common law incompatibility exists. In such a situation, unless there are constitutional or statutory prohibitions, persons may hold more than one compatible office. 63 Am. Jur. 2d Public Officials and Employees § 65 (1984).

In summary, current North Dakota law does not prohibit a county official from holding more than one office at the same time. Furthermore, the statute providing for full compensation for all services rendered relates to the duties of the office for which the county official has been elected or appointed rather than to additional offices which may be undertaken by that official.

Finally, the doctrine of incompatible offices would prohibit a person from simultaneously holding two or more offices where the functions or interests conflict or are inherently consist with one another. The determination of whether one holds incompatible offices is a question of fact which can only be determined by a review of facts and circumstances of each and every case.

Sincerely,

Nicholas J. Spaeth

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