

N.D.A.G. Letter to Rohrich (Aug. 2, 1991)

August 2, 1991

Mr. F. C. Rohrich
Emmons County State's Attorney
P.O. Box 657
Linton, ND 58552

Dear Mr. Rohrich:

Thank you for your July 11, 1991, letter asking if a person elected to the Braddock School Board may also serve as the county superintendent of schools.

There is no general state statute that prohibits the holding of two offices by one person, nor is there a specific statute forbidding a member of a local school board from also holding the office of superintendent of schools or any other county office. Furthermore, N.D.C.C. § 44-08-19, which makes it unlawful for public employees to engage in political activities while on duty, also provides that the statute may not be construed to prevent public employees "from seeking or accepting election or appointment to public office."

However, it is a well settled rule of common law that a person may not hold two offices at the same time which are incompatible. State v. Lee, 50 N.W.2d 124 (N.D. 1951). There is no constitutionally protected right to hold incompatible offices or employments and the rule against holding incompatible offices or positions does not result in an unconstitutional infringement of personal and political rights. Tarpo v. Bowman Public School District No. 1, 232 N.W.2d 67 (N.D. 1975). Incompatibility of offices exists where there is a conflict in the duties of the offices, so that the performance of the duties of the one interferes with the performance of the duties of the other. Lee, 50 N.W.2d at 126. Two offices or positions are incompatible when one has the power of appointment to the other or the power to remove the other, and if there are many potential conflicts of interest between the two, such as salary negotiations, supervision and control of duties and obligations to the public to exercise independent judgment. Tarpo, 232 N.W.2d at 71.

The duties of the county superintendent of schools are set forth at N.D.C.C. ch. 15-22. The county superintendent "shall have the general superintendence of the schools in the county except in districts which employ a district superintendent of schools." N.D.C.C. § 15-22-09. The county superintendent has certain ministerial functions such as receiving and transmitting records and making certain reports. The county superintendent also has general responsibility for assisting districts and promoting coordination and cooperation among the districts, and is authorized to decide "matters in controversy in the administration of school laws or appealed to the county superintendent." Id.

Your letter indicates the Braddock School Board is an "interim school board," and the only work remaining for that board concerns annexation of its property to other districts. I am

informed that the Braddock school has been closed and the district is in the process of being dissolved and its territory will be attached to one or more adjoining school districts. This process is governed by N.D.C.C. ch. 15-27.4.

Although generally the positions of school board member and county superintendent would be incompatible offices, the unique circumstances described lead me to conclude that the two positions are not incompatible in this particular case.

The duty of the county superintendent to generally supervise the county schools does not cause a conflict because Braddock does not have a school. Although a county superintendent who is a member of the governing board of one of the parties to a dispute could not decide the matter if it is appealed to the county superintendent, it is unlikely any disputes involving Braddock will be appealed to the county superintendent. The district is being dissolved. Dissolution of the district is governed by N.D.C.C. ch. 15-27.4. Matters relating to the dissolution of a school district are decided by the county committee, subject to approval by the state board. The county superintendent serves as the secretary of the county committee, but is not a voting member of that committee. N.D.C.C. § 15-27.1-04. Therefore, duties of the county superintendent in connection with the dissolution of a school district are largely ministerial and dissolution of the Braddock district does not create incompatibility between the two offices.

The members of the county committee are appointed by the county superintendent with the approval of the board of county commissioners. N.D.C.C. § 15-27.1-03(2). Because a member must be appointed from each county commissioner district within the county, and because the appointments are subject to approval by the board of county commissioners, the county superintendent does not have unbridled authority to appoint whomever he wishes to this committee. All areas of the county are entitled to equal representation on the committee and the county superintendent cannot appoint more members from the county district where the Braddock school district is located than from other county districts. Therefore, it does not appear that this authority creates any incompatibility with service on the Braddock School Board.

I hope this information is helpful to you.

Sincerely,

Nicholas J. Spaeth

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