

**OPINION
68-111**

November 8, 1968 (OPINION)

Honorable Ted Weisenburger

County Judge, Benson County

RE: Counties - Courts of Increased Jurisdiction - Tribal Judge

This is in response to your letter in which you advise that you have been unanimously approved for the position of Trial Judge with the Devils Lake Sioux Indian Reservation Tribal Council. The County Commissioners of Benson County have also given approval of your taking this position. You then call attention to Section 27-08-09 of the North Dakota Century Code and ask if performing the functions of Trial Judge and County Judge would be in violation of said section, which provides as follows:

"JUDGE OF COUNTY COURT HAVING INCREASED JURISDICTION NOT TO ACT AS ATTORNEY - REMOVAL FOR VIOLATION. A judge of a county court having increased jurisdiction shall not act as attorney or counselor at law during the period of his incumbency. Any such judge who willfully shall violate the provisions of this section shall be subject to removal from office."

It is observed that the above quoted section prohibits a judge of a county court of increased jurisdiction from acting as attorney or counselor at law. It also provides that the violation of this provision subjects the judge to removal of office. While a judge of a county court of increased jurisdiction in performing his duties is "practicing law", in a loose and broad sense in that he administers justice and interprets laws, he is not acting as counselor or attorney at law for an individual or individuals. What the statute prohibits is the acting as counselor or attorney at law or the representation of such persons as a party litigant. This, he would not be doing in the position of Trial Judge for the Devils Lake Sioux Indian Reservation Tribal Council, if our assumption is correct that he would be acting in a judicial capacity rather than a party litigant. In both of these positions he would be acting in a judicial capacity rather than representing a party litigant.

It is, therefore, our opinion that such position can be held without conflict as a matter of law. However, if the duties of the Trial Judge for the Tribal Council were to prevent you from giving full attention to the duties of County Judge, the County Commissioners could demand that you surrender one position or the other. This, however, would become a question of fact.

Also, should a matter of jurisdiction arise involving a dispute whether State law or Indian law prevails, or whether the State has jurisdiction or the Tribal Council and, as a result thereof, you would find it necessary to disqualify yourself, it would be imperative for you to disqualify yourself as a Trial Judge for the Tribal Council rather than County Judge. You should never put yourself in a position where you would disqualify yourself as acting

County Judge because of any matter arising out of your position as Trial Judge for the Indian Tribal Council.

HELGI JOHANNESON

Attorney General