

Office of the Attorney General
State of North Dakota

Opinion No. 81-83

Date Issued: August 13, 1981

Requested by: Richard L. Schnell
Morton County State's Attorney

--QUESTION PRESENTED--

I.

Whether an attorney elected as a full-time state's attorney is entitled to any period of time following the commencement of the term of office to terminate all private practice obligations.

II.

Whether a board of county commissioners may grant a reasonable time period to a newly-elected full-time state's attorney to allow the termination of all private practice obligations.

--ATTORNEY GENERAL'S OPINION--

I.

It is my opinion that an attorney who is elected as a full-time state's attorney is not entitled to receive a transitional time period following the commencement of the term of office to terminate all private practice obligations.

II.

It is my further opinion that a board of county commissioners may not grant a transitional time period to a newly-elected full-time state's attorney in order to allow termination of all private practice obligations.

--ANALYSIS--

I.

Section 11-16-05(5) of the North Dakota Century Code states, in part, as follows:

The state's attorney shall not:

5. Be concerned as attorney or counsel for any party, other than the state or county, in any action or proceeding whatsoever when employed by a county having a population exceeding thirty-five thousand or by any other county whose board of commissioners has, by resolution, determined that the state's attorney shall be restricted in this manner. . . .

An individual who seeks and is elected to the office of state's attorney where the restrictions of Section 11-16-05(5), N.D.C.C., apply should expect to terminate all obligations conflicting with this duty prior to taking office. There are no statutory provisions allowing any transitional time period within which the person elected would be allowed to terminate private practice obligations and thus continue a private practice while serving in such an elected capacity.

II.

For those state's attorneys who are subject to the restrictions of Section 11-16-05(5), N.D.C.C., the statute clearly recites that a state's attorney cannot act as an attorney or counsel for any party other than the state or county during the term of office. As the statute is clear in its requirement and provides no exceptions or alternatives, an attempt by a board of county commissioners, whether by formal resolution or otherwise, to grant a transitional time period to a newly-elected full-time state's attorney so as to allow time in which to terminate private practice obligations would have no legal effect.

--EFFECT--

This opinion is issued pursuant to Section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the question presented is decided by the courts.

Robert O. Wefald
Attorney General

Prepared by: John E. Jacobson
Assistant Attorney General