

N.D.A.G. Letter to Rohrich (Apr. 14, 1983)

April 14, 1983

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

Dear Clem:

I have reviewed the opinion you rendered to Mayor Borr of Strasburg, North Dakota, concerning whether one of the city council members, who was recently appointed by the county commissioners to be the County Director of Tax Equalization, would have a conflict of interest.

I agree with your conclusion that a conflict of interest would exist when the County Director of Tax Equalization is also a member of a city council within that county. The term "conflict of interest" speaks of a situation in which regard for one duty tends to lead to the disregard of another. This could result when the County Director of Tax Equalization also sits on the City Board of Equalization for the City of Strasburg. The two duties and functions appear to be in conflict with one another.

The North Dakota Supreme Court stated in Tarpo v. Bowman Public School District No. 1, 232 N.W.2d 67, 70 (N.D. 1975):

'[i]t is a well-settled rule of the common law that a person may not, at one and the same time, rightfully hold two offices which are incompatible.'

The courts have hesitated to form a general definition of what constitutes incompatibility. Each case is discussed and decided upon its particular facts. The functions and duties of the offices are determinative of whether they are incompatible or not. In State v. Lee, 50 N.W.2d 124, 126 (N.D. 1951), the Court stated:

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. This is something more than a physical impossibility to discharge the duties of both offices at the same time. They are generally considered incompatible where such duties and functions are inherently inconsistent and repugnant so that, because of the contrariness and antagonism which would result from the attempt of one person to discharge faithfully, impartially and efficiently the duties of both offices, considerations of public policy render it improper for an incumbent to retain both.

It appears that there are many potential conflicts of interest between the two above-stated positions, such as the control of duties and obligations to the public to exercise

independent judgment, and therefore I agree with your conclusion that a conflict of interest does exist and that the two positions are incompatible.

Sincerely,

Robert O. Wefald

bww