

**OPINION
70-508**

April 6, 1970 (OPINION)

Mr. Neil Thompson

State's Attorney

Ramsey County

RE: Townships - Clerk and Treasurer - Merger of Offices

This is in response to your letter in which you state the following:

At the last township election held in Creel Township, Ramsey County, North Dakota, the following problem was created:

A Clerk was elected as a result of the election;

A Treasurer was elected as a result of the election;

The offices of Clerk and Treasurer were merged as a result of the same election.

I, therefore, request your opinion as to whether or not the merger of the two offices takes place immediately, or takes place in the future. If the office is merged, it is necessary to have an additional election for the determination of who will hold the merged office, or will the two officers elected serve until the next election?"

The 1969 Legislative Assembly through chapter 539 amended section 58-05-02, which as is material here, provides in part as follows:

* * * One supervisor shall be elected at each annual township meeting and shall hold his office for a term of three years. The other elective officers shall be elected every two years and shall hold their respective offices for a term of two years. Each officer shall serve until his successor is elected and qualified. The same person may hold the offices of township clerk and treasurer if a majority of the electors present vote in favor of the merging of such offices at the annual township meeting. The person elected to fill the merged office shall perform all of the duties required of both the township clerk and treasurer except as otherwise specifically provided by law."

The significant portion of the amendment is contained in the following sentence: "The same person may hold the offices of township clerk and treasurer if a majority of the electors present vote in favor of the merging of such offices at the annual township meeting."

The statute in question does not require that the merging of the offices and the election of the officer be accomplished at the same time. It merely requires that the question of whether or not the

office be merged be presented and voted upon at the annual meeting. If the electors had first decided to merge the offices, and upon a favorable vote the offices would have been merged, then the electors could have elected an officer to fill the merged offices, but apparently this was not done. The electors merely voted to merge the office of Clerk and Treasurer without stating when such merger will be effective. On the basis that the electors elected separately a Clerk and a Treasurer to the respective offices is almost a conclusive presumption that the electors did not wish the merger to be effective at this meeting, and that the merger would be effective at the next election which would be at the expiration of the current term.

Based on the information submitted, it is our opinion that where the electors vote to merge the officers of Treasurer and Clerk without specifying the time when such merger becomes effective, and at the same time elect a Clerk and Treasurer for the respective office, that the merger of the two offices does not become effective until the expiration of the current term of the Clerk and Treasurer. The next election in 1972 the electors can fill the merged office of Clerk and Treasurer by electing one person to fill such office.

HELGI JOHANNESON

Attorney General