

**LETTER OPINION
2001-L-40**

October 9, 2001

Mr. Fabian E. Noack
Foster County State's Attorney
PO Box 15
Carrington, ND 58421

Dear Mr. Noack:

Thank you for your letter asking whether a clerk of district court may serve as deputy for the register of deeds and whether the register of deeds may serve as deputy for the clerk of district court.

Section 11-10-11, N.D.C.C., states:

(Effective through December 31, 2002) Appointment and salary of deputies and clerks. The salaries of deputies, clerks, and assistants for the county auditor, county treasurer, sheriff, recorder, clerk of the district court, and state's attorney must be fixed by a resolution of the board of county commissioners. Each of the named officers may appoint such deputies, clerks, and assistants, in accordance with the budget, except none of the officers mentioned in this section may appoint as deputy any other officer mentioned in this section.

(Effective January 1, 2003) Appointment and salary of deputies and clerks. The salaries of deputies, clerks, and assistants for the county auditor, county treasurer, sheriff, recorder, ex officio clerk of the district court, and state's attorney must be fixed by a resolution of the board of county commissioners. Each of the named officers may appoint such deputies, clerks, and assistants, in accordance with the budget, except none of the officers mentioned in this section may appoint as deputy any other officer mentioned in this section.

The term "register of deeds" has been replaced throughout the North Dakota Century Code with the term "recorder." 2001 N.D. Sess. Laws ch. 120.

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It is my opinion that section 11-10-11, quoted above, prohibits the recorder from serving as deputy for the clerk of district court and prohibits the clerk of district court from serving as deputy for the recorder.

You express concern that in small counties, like Foster County, it is financially advisable and provides for better continuity of service if officials can serve as deputies of other offices. You may wish to raise this issue with your local legislators, who may attempt to change this statute in the next legislative session.

Sincerely,

Wayne Stenehjem
Attorney General

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