

## **N.D.A.G. Letter to Ficek (Feb. 19, 1991)**

February 19, 1991

Mr. Vince H. Ficek  
City Attorney  
41 First Avenue W  
Dickinson, ND 58602-0866

Dear Mr. Ficek:

Thank you for your January 5, 1991, letter requesting my opinion on whether a person who is already an elected official can be appointed as president of the board of city commissioners. Specifically, you request my opinion on whether someone currently serving in an elected position with the West River Water Supply District can also hold the position of president of the board of city commissioners for the city of Dickinson, by appointment by the board to fill an unexpired term created by a resignation.

The West River Water Supply District, created by N.D.C.C. ch. 61-24.2, is "a corporate agency of this state." N.D.C.C. § 61-24.2-03.

N.D.C.C. § 40-09-08 declares the president of a city board of commissioners the executive officer of the city. The only statutory restriction on who may serve on the board of city commissioners is found in N.D.C.C. § 40-09-17 which provides:

No member of the board of city commissioners shall:

1. Be eligible to any other office the salary of which is payable out of the city treasury;
2. Hold any other office under the city government; and
3. Hold a position of remuneration in the employment of the city.

None of these restrictions prohibit a member of the board of directors of West River Water Supply District from serving on the board of city commissioners.

North Dakota does not have a general statute prohibiting the same person from holding two offices. State v. Lee, 50 N.W.2d 124 (N.D. 1951). There are some statutory provisions which prohibit the holding of specific offices, however, none of them concern the offices in question here. A former opinion by this office dealt with whether a mayor of a city could also hold the position of public administrator in the county government. In concluding that the mayor of the city could also hold the position of public administrator for a county, the opinion considered the common law prohibition against holding incompatible offices. See 1982 N.D. Op. Att'y Gen. 82, a copy of which is attached hereto.

After comparing the duties of the board of directors of the West River Water Supply District found in N.D.C.C. § 61-24.2-07 and the duties of the president of the board of city commissioners as outlined in N.D.C.C. §§ 40-09-08, 40-05-02, and 40-05-01, it is my opinion that the two offices are not incompatible. The duties and functions of the two positions are not inherently inconsistent nor are there any conflicts within the duties of the two offices which would make it contrary to public policy to have them both held by the same person.

Based upon the foregoing analysis, it is my opinion that the same person may simultaneously hold the position of president of the board of city commissioners for the city of Dickinson and be an elected member of the board of the West River Water Supply District.

Sincerely,

Nicholas J. Spaeth

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Enclosures