

N.D.A.G. Letter to Lindell (April 11, 1986)

April 11, 1986

Mr. William F. Lindell
Washburn City Attorney
P.O. Box 427
Washburn, ND 58577

Dear Mr. Lindell:

Thank you for your letter of April 7, 1986, concerning two matters which may involve incompatible offices being held by the same person.

In the first factual matter, you inquire as to whether a person may sit as a member of the Wilton Park Board and as a member of Wilton City Commission at one and the same time.

Enclosed you will find an opinion of this office dated April 13, 1936, as well as a letter to the Hebron city attorney dated April 14, 1964. The opinion and the letter conclude that there is no statutory prohibition against a person sitting as a member of a park board and a city commission/city council at one and the same time. However, utilizing a common law doctrine of incompatible offices, the conclusion reached in both the opinion and the letter is that it would be incompatible for one person to hold both offices at one and the same time. The opinion and letter reached this conclusion on the basis that the principal objective underlying the establishment of a park board is the division of responsibility of supervising parks from the responsibility of supervising other city matters. As the letter concluded, to allow the same person to serve on both boards would defeat the very purpose for which the park board was organized.

The doctrine of incompatible offices has been acknowledged and approved by the North Dakota Supreme Court. Tarpo v. Bowman Public School Dist. No. 1, 232 N.W.2d 67 (N.D. 1975); State v. Lee, 50 N.W.2d 124 (N.D. 1951). One of the grounds provided by the Supreme Court in determining whether or not offices are incompatible is a determination of whether the two offices involve antagonism and conflict in duty so that an incumbent of one could not discharge with fidelity and propriety the duties of both.

Based upon the opinion and letter of this office, the lack of a legislative response thereto, and the Supreme Court cases dealing with incompatible offices, I have no other choice but to agree with the earlier conclusions of this office insofar as an incompatible situation does exist when one person sits as a member of a park board and a city commission/city council at one and the same time. Therefore, in direct answer to your question, one person may not hold the office of city commissioner and the office of city park board member at the same time.

Your second factual matter involves a deputy sheriff who has been elected to the Wilton City Commission. According to your letter, the individual is one of several individuals assigned to fulfill a contract between the McLean County Sheriff's Department and the city of Wilton in terms of police protection. The question is whether the individual may serve a city commissioner and still retain his employment with McLean County.

Again, North Dakota statutes do not specifically prohibit one person from simultaneously having employment with or being a member of public bodies of the city and county. Instead, the doctrine of incompatible offices (or positions) would once again have to be applied to determine whether the individual may hold these two offices at one and the same time. As your letter does not contain specific facts concerning the involvement of the individual with the Wilton city contract, it is difficult for us to draw any further conclusions. Instead, we will leave to you the task of applying the standards laid down by the North Dakota Supreme Court in applying the doctrine of incompatible offices.

We would observe, however, that a simple solution may be to simply have this individual not involved with the contract involving the city of Wilton so as to remove potential conflicts and antagonism in the discharge of the duties involved.

Sincerely,

Nicholas J. Spaeth

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Enclosures

cc: Jerel Schimmelpfennig