

OPINION
62-268

August 6, 1962 (OPINION)

VILLAGES

RE: Office of Trustee and Policeman in Village Are Compatible

The Village Attorney, Mr. Frank T. Knox, has requested us to write to you concerning the right of the Board of Trustees of the Village of West Fargo to appoint one or more of the village trustees as a policeman for the village. Mr. Knox has advised you, under section 40-07-18 of the North Dakota Century Code, that no limitation has been placed by the Code upon eligibility for such an appointment and the board of trustees has the right to fix the compensation of the person appointed. Mr. Knox has also advised you that the appointment of a member of the board of trustees as policemen would be subject to the provisions of section 12-10-06 of the North Dakota Century Code.

While we have not had occasion to consider this precise question before, we are in general agreement with Mr. Knox's conclusions.

We note that the appointment of policemen in villages is governed by sections 40-07-18 and 40-07-20 of the North Dakota Century Code. These sections provide:

40-07-18. APPOINTMENT OF NIGHT WATCHMEN OR POLICEMEN IN VILLAGES - COMPENSATION - OATH - QUALIFICATIONS. The governing body of a village may appoint one or more night watchmen or policemen when it is necessary to preserve the peace of the village. The compensation of the night watchmen or policemen shall be fixed by the governing body. Any person appointed as night watchman or policeman shall qualify by taking the oath prescribed for civil officers and shall possess the same powers and duties as a village marshal."

40-07-20. APPOINTMENT OF VILLAGE MARSHAL AUTHORIZED. The board of trustees of any incorporated village of the state of North Dakota is hereby authorized and empowered to appoint a village marshal, and additional police officers, when deemed necessary to the preservation of the peace of the village, and are hereby authorized and empowered to fix the compensation of such officers. Any officer so appointed shall qualify by taking oath of office and shall possess all the powers and perform all the duties now provided by law and village regulations."

These sections would appear to indicate that a policeman is a village officer. The position of village trustee is also a village office. The general rule of law applicable to the same person holding two offices is that the same is permissible, unless expressly forbidden by statute or unless the two offices are incompatible. As noted in Mr. Knox's letter, there is no statute expressly forbidding a person from holding the offices of village trustee and village policeman.

In our estimation, the two offices are compatible and may be held by the same person.

We also believe, as Mr. Knox has stated, that the appointment of one of the village trustees as policeman by the village board of trustees would be subject to the provisions of section 12-10-06 of the North Dakota Century Code. This section provides:

12-10-06. PERSONAL INTERESTS IN CONTRACT BY PUBLIC OFFICER PUNISHMENT EXCEPTION. Every public officer authorized to sell or lease any property, or make any contract in his official capacity, who contrary to law voluntarily becomes interested individually in such sale, lease, or contract, directly or indirectly, is guilty of a misdemeanor. Provided, however, that contracts of purchase or employment, by a township, a municipality having a population of not more than ten thousand, according to the last official census, a school district or a park district, may be entered into with an officer of such township, municipality, school district, or park district, if such contracts are unanimously approved by the other members of the governing body of the township, municipality, school district, or park district and declared, by a finding unanimously adopted by such other members and entered in the official minutes of the governing body, to be necessary for the reason that the services or property obtained is not otherwise available at equal cost.

It is, therefore, our opinion that the provisions of sections 40-13-05 and 40-13-06 relative to officers being interested in contracts or work of the municipality would not be applicable since the village of West Fargo does not have a population of ten thousand or more.

LESLIE R. BURGUM

Attorney General