

OPINION
64-139

August 12, 1964 (OPINION)

Mr. John C. McClintock

City Attorney

Rugby, North Dakota

RE: Justice Court - Appearances - Conflicts

This is in response to your letter in which you ask, does the term "occupying the same room" as found in Section 33-03-01 of the North Dakota Century Code prevent or prohibit an attorney practicing law under a partnership agreement or an employer-employee relationship from acting as an attorney before a justice court if the other member of the firm is county justice.

Section 33-03-01 of the North Dakota Century Code provides as follows:

APPEARANCE IN PERSON OR BY ATTORNEY - WHO NOT TO ACT AS ATTORNEY. - In a justice court, the parties may appear and act in person or by attorney. any person other than:

1. A person, including a practicing attorney, occupying the same room which the justice has his office; or
2. A person employed in serving the summons or venire, may act as attorney."

It appears that the Legislature in enacting this provision wished to prevent a relationship between the justice and other attorneys which would not be favorable to the office. The Legislature took these precautionary steps in an effort to eliminate any unfavorable criticism against the judicial process as then found in the justice of peace court.

It also appears that where the Legislature specifically prohibited an attorney from appearing before the justice where they merely occupy the same room, the closer relationship of employer-employee or partnership would necessarily be included in this prohibition.

It is quite apparent that the Legislature wished the office of justice to be completely free of potential undue influences.

While not directly in point, but to help illustrate the thought behind the statutory provision, we would like to recall a statement made by a prominent member of the judiciary, who said:

It is not enough to merely be a good, honest and fair judge, but the public must also believe that he is such."

Enclosed herewith is a copy of a letter addressed to Mr. Albert A. Wolf, Burleigh County State's Attorney, Bismarck, North Dakota, dated January 16, 1964, which pertains to the police magistrate. You will notice that, in the absence of a statutory provision, a somewhat similar conclusion reached therein.

In accordance with the foregoing, it is our opinion that a practicing attorney occupying the same room with the justice may not appear as attorney before said justice.

HELGI JOHANNESON

Attorney General