

**OPINION
69-257**

June 18, 1969 (OPINION)

Mr. Raymond R. Rund

State's Attorney

Steele County

RE: Officers - Incompatibility of Officers - County Auditor and

Director of Tax Equalization

This is in reply to your letter of June 11, 1969, relative to Senate Bill 166 enacted by the 1969 Legislative Assembly. You state the following facts and questions:

I enclose a copy of Senate Bill No. 166, passed by the 1969 Legislature, establishing the position of County Director of Tax Equalization. Is there anything incompatible between the duties of this Director and the County Auditor of one of the several counties of our state, so that the same can be held by appointment of the County Auditor of the county?"

Section 1 of the bill provides that prior to October 1 of either 1969 or 1970, the county commissioners of each county shall appoint a county director of tax equalization who shall be qualified and experienced in proper appraisals and familiar with assessment and equalization procedures and techniques. The bill further provides that the county director of tax equalization shall serve at the pleasure of the board of county commissioners and may be employed on a full or part-time basis.

Perhaps the first issue which would arise would be whether the county auditor may be employed in another capacity by the county. It would seem obvious that the county auditor could not be appointed to a full-time position as county director of tax equalization since that position would be contrary to the presumption that the county auditor is a full-time county officer. While the appointment of the county auditor to the position in a part-time capacity may not be as repugnant to the presumption that the office of county auditor is a full-time position it nevertheless generates some of the same objections.

We note that in enacting Senate Bill 166 the Legislature must be presumed to have intended to alter the present status of this subject matter. Thus the bill repeals section 11-10-02.2 of the North Dakota Century Code, as amended, which establishes the position of county supervisor of assessments and specifically permits the county commissioners to appoint as supervisor of assessments the county auditor or a deputy auditor or other elected county official, or any other person who is qualified. While there are significant differences between the position of county supervisor of assessments and county director of tax equalization, the offices are similar in the general subject matter which the holder of the office is

concerned. By repealing section 11-10-02.2 of the North Dakota Century Code and not inserting in Senate Bill 166 a provision that the office of county director of tax equalization could be held by the county auditor, we believe the Legislature evidenced an intent that the county auditor not be appointed to such office.

We would further note that section 6 of Senate Bill 166 requires the county director of tax equalization to, among other things, "assist the county auditor in preparation of assessment lists for taxing purposes, in obtaining statistical information as defined in chapter 4-01, and in the correction and omission procedures as defined in chapter 57-14." If the two positions were held by the same person the county auditor would, of course, receive no such assistance.

While not attempting to answer the question, we do not intend to exclude the possibility that the county auditor could be appointed as a deputy or a clerk by the county director of tax equalization if such appointment were for a specific purpose.

In summary, it is our opinion that the office of county director of tax equalization created by Senate Bill 166 cannot be held by the county auditor on either a full-time or a part-time basis.

HELGI JOHANNESON

Attorney General