

**OPINION
70-109**

September 30, 1970(OPINION)

Mr. Thomas L. Secrest
State's Attorney
Adams County

RE: Counties - Officers - Candidate for Two Offices

This is in response to your letter in which you set forth that a person sought at the Primary Election received the nomination for both offices.

You then ask for an opinion if this person may have his name appear on the ballot as a nominee for both the office of state's attorney and the office of county justice.

The two offices mentioned are incompatible and one person may not hold both offices. On July 22, 1970, in a letter addressed to you, we made the following observation:

"if nominated for more than one office, it would appear he must make an election, unless the offices may be held by the same person."

Section 16-05-02 which pertains to nominations for office provides as follows:

"CERTIFICATE OF NOMINATION TO CONTAIN ONE NAME - PERSON TO PARTICIPATE IN ONLY ONE NOMINATION. No certificate of nomination, except in the case of presidential electors, shall contain the name of more than one candidate for each office to be filled. No person shall participate directly or indirectly in the nomination at caucus, in convention, or by petition of more than one person for each office to be filled, and no person shall accept a nomination for more than one office. No political party shall be entitled to have placed upon the official ballot more than one set or list of nominees.

This section has its origin in Section 6 of Chapter 66 of the 1891 Session Laws. This section provided that no person shall join in the nomination of more than one person for each office to be filled, and no person shall accept a nomination to more than one office. The title of Chapter 66 clearly indicates that the provision was to apply to all elections, except municipal, town, or school elections.

There have been numerous amendments and revisions of the original act, but the one provision has not undergone any substantive changes. This provision is the one underlined in Section 16-05-02 cited above. In reviewing the various changes of this section and in other provisions of law it becomes apparent that the spirit of the law does not contemplate that a person should have dual nomination. The underlined portion in Section 16-05-02 leaves little room for doubt as to what the laws in this state contemplate with reference to dual nominations or one person being nominated for more than one office. It further becomes clearer in this particular instance where the offices are incompatible that a person should not be permitted to have the nomination for both offices, because it will deprive the electorate from making a proper decision. The will of the electorate can be denied by permitting dual nominations.

It is therefore our opinion that the individual who has been nominated for both the office of state's attorney and the office of county justice for Adams County may not be permitted to retain both nominations and to have his name placed on the ballot for both offices. Such individual will be required to elect one of the two nominations.

HELGI JOHANNESON
Attorney General