

**OPINION
70-125**

December 18, 1970(OPINION)

Mr. Robert D. Hartl
Attorney at Law
Rugby, ND

RE: Counties - State's Attorney - Indian Trial Judge

This is in response to your letter in which you state that you have been issued a certificate of election which authorizes you to accept and fulfill the duties of the office of state's attorney in and for Pierce County with the term commencing in January, 1971.

You further advise that on November 1, 1970, you commenced another four-year term as trial judge, Bureau of Indian Affairs, Turtle Mountain Indian Reservation, Belcourt, North Dakota. You also advise that the Towner County State's Attorney for the past four years has acted as trial judge on the Turtle Mountain Reservation and that you have served on specific cases at the Fort Berthold Agency in accordance with BIA authorizations.

You then call our attention to Section 11-16-05(2) and ask for an opinion whether or not you, as state's attorney beginning January, 1971, may continue to hold the office of trial judge for the Bureau of Indian Affairs as stated above.

Section 11-16-05(2) states as follows:

"RESTRICTIONS ON POWERS OF STATE'S ATTORNEY - PENALTY FOR BREACH OF DUTY. The state's attorney shall not:

* * *

2. Be eligible to or hold any judicial office except that of United States commissioner;

* * *"

The language "judicial office" probably could be construed to mean a judicial office within and under the jurisdiction of the state but where the Legislature made an exception to the office of United States commissioner such construction to the term "judicial office" is no longer available. By stating the exception the Legislature obviously discloses its intent to include all judicial offices

whether they are of the same jurisdiction of sovereignty. The state is a limited sovereign governmental body and the United States government is a sovereign body, but nevertheless, by the language employed the Legislature clearly intended to include every judicial office even though it was of another sovereign government.

The Indian tribes as such are a limited independent government (nation) but under certain conditions and in many respects come under the same jurisdictions and are subject to many of the state laws and laws of the United States.

We have been unable to find any authority which would exclude a judicial office with the Bureau of Indian Affairs as being an office excluded from the term "judicial office" as used in the statute quoted.

It is therefore our opinion that the office of trial judge would come within the prohibition mentioned in subsection 2 of Section 11-16-05.

HELGI JOHANNESON
Attorney General