

Superseded by statute; see N.D.A.G. Letter to Whitman (April 23, 1990)

OPINION
70-254

January 21, 1970 (OPINION)

Mr. LeRoy P. Anseth
Williams County State's Attorney

RE: Officers - Incompatibility of Offices - City Assessor and Director of Tax Equalization

This is in reply to your letter of January 15, 1970, with regard to appointment of city assessors and county directors of tax equalization and compatibility between these offices.

You inform us that your county is presently in the process of hiring a county director of tax equalization. The county officials apparently believe that there is not a need for a full-time director at this time so contemplate engaging the individual for this purpose on a part-time basis. Also, you indicate your county seat city is without a city assessor. Your first question is thus whether or not the county can hire a full-time director of tax equalization who could also serve as assessor for the city and the city then reimburse the county for a certain percentage of the costs and salaries.

You further indicate that if the answer to the first question is in the negative, that the question is then whether the county could hire the county director of tax equalization on a part-time basis and the city hire the same man as a part-time city assessor. You further indicate that this question is as to the compatibility of these two positions and whether there is a conflict of interest between the county director of tax equalization who would be over the city assessor.

We note that Sections 40-14-04 and 40-15-05 of the North Dakota Century Code provide that the mayor and city council or board of city commissioners, dependent on the type of city, shall appoint the city assessor or assessors. The duties of such assessors are set forth in chapter 40-19 of the North Dakota Century Code. Section 40-13-04 of the North Dakota Century Code provides that officers and employees of municipalities shall receive the salary, fees or other compensation fixed as prescribed therein. On this basis the city cannot contract with the county for city assessor service but should appoint and pay their assessor directly.

In reply to your second question, this method would appear to be more in keeping with the apparent legislative intention that there be a city assessor, though as you mention there is a serious question as to the compatibility of the two offices. In *State v. Lee*, 50 N.W.2d. 124, 78 N.D. 489, our Supreme Court considers this problem quite extensively. At page 493 of the North Dakota Reporter they quote the following (and other language) from 43 Am. Jur., Public Officers, Section 70, page 935:

* * * It is to be found in the character of the offices and their relation to each other in the subordination of the one to the other, and in the nature of the duties and functions which attach to them. Incompatibility of offices exists where there is a conflict in the duties of the offices, so that the performance of

the duties of the one interferes with the performance of the duties of the other. This is something more than a physical impossibility to discharge the duties of both offices at the same time. They are generally considered incompatible where such duties and functions are inherently inconsistent and repugnant so that, because of the contrariety and antagonism which would result from the attempt of one person to discharge faithfully, impartially and efficiently the duties of both offices, considerations of public policy render it improper for an incumbent to retain both."

We note in that case that our Supreme Court indicates that bearing such tests in mind, they look to the law for the functions and duties of the offices, and then look to the question of whether there is any phase of the duties of these where conflicts or inconsistencies make holding of such offices by one person contrary to public policy.

The powers and duties of the county director of tax equalization are set forth in Sections 11-10.1-05 and 11-10.1-06 of the 1969 Supplement to the North Dakota Century Code as follows:

11-10.1-05. POWERS AND DUTIES OF COUNTY DIRECTOR OF TAX EQUALIZATION. The county director of tax equalization shall have the power, duty and responsibility to call upon and confer with township and city assessors in the county and to instruct them in the preparation and proper use of land maps and property record cards, the preparation of assessment books, the changes in assessment law and regulations, the determination of proper standards of value, the use of proper classifications of property, and the authority to require attendance at meetings, to the end that a uniform assessment of all personal and real property in the county will prevail."

11-10.1-06. ASSUMPTION OF CERTAIN DUTIES BY COUNTY DIRECTOR OF TAX EQUALIZATION AND TOWNSHIP CLERKS. The county director of tax equalization shall succeed to all the powers and duties of the county auditor pertaining to the administration and enforcement of the mobile homes tax prescribed in chapter 57-55, 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, assist local equalization boards and assessors by providing information and instruction in the use of all methods and procedures to obtain uniform property assessments and spot check all property assessments."

These statutes are relatively new legislation. This is a new office at least in this state. We do not find specific precedent on the question of whether the offices of city assessor and county director of tax equalization are incompatible, though we have considered the lists of compatible and incompatible offices at Sections 72 and 74, Public Officers, 42 Am. Jur. 937, 938, and at section 469, pages 140 through 145 McQuillin Municipal Corporations, 2nd Edition, Revised, Volume 2. We have considered the decision of the Supreme Court of Michigan in *Dust v. Oakman*, 86 N.W. 151-53, where that court held the offices of city assessor and member of the board of state tax commissioners to be incompatible, though in that decision the court does not describe in detail the duties of these respective offices.

Looking to the respective duties of this newly created office, we do note that the city assessor is in at least one sense of the word subordinate to the county director of tax equalization. While the determinations of the local assessors are not in any sense of the word appealed to the county director of tax equalization, he is required to instruct the assessors, prior to their assessment, consult with them on matters relating to the duties of their offices, and spot check their assessments, as well as rendering general assistance to them. It seems at least incongruous that the same individual would hold the office of advisor, instructor, consultant, assistant and supervisor of himself holding another office. It seems completely inconsistent with the purposes of this act that the same person would "spot check" his own assessments. On such basis we must conclude that there is such a conflict between these offices as to establish a common law incompatibility and on such basis it is our opinion that the same person cannot hold the office of county director of tax equalization and the office of city assessor within the jurisdiction of such county director of tax equalization.

HELGI JOHANNESON
Attorney General