

**OPINION
75-165**

July 16, 1975 (OPINION)

The Honorable Arthur A. Link
Governor
State Capitol
Bismarck, ND 58505

Dear Governor Link:

This is in reply to your letter of July 2, 1975, in which you indicate that you are considering the joint administration of the State Park Service and the State Outdoor Recreation Agency under one administrator. You indicate that the joint administration of both agencies is desirable from the standpoint of financial savings, coordination of state services and delivery of those services. The proposed executive order attached to your letter indicates that a department, tentatively titled the North Dakota Parks and Recreation Department, will be the designated title of this joint administration. You further point out that budgetary matters will have to be accounted for on a separate basis to comply with legislative intent until the state legislature has an opportunity to combine fiscal matters.

As you point out, the director of state parks and the executive officer of the Outdoor Recreation Agency are both appointed by the governor. There is no express statutory language that would prohibit the holding of more than one office by either of these officers (whereas the highway commissioner, for example, is expressly prohibited by Section 24-02-04, N.D.C.C., from holding any other office). Thus it would appear that the issue becomes one of compatibility of the two offices under one director.

Chapter 55-08, N.D.C.C., provides that the director of the North Dakota Park Service shall be appointed by the governor and shall serve at his will. The duties and limitations of the director are specified at Section 55-08-03, N.D.C.C., and the manner of operation of the Park Service is set forth elsewhere in Chapter 55-08. Aside from these statutorily-specified responsibilities and limitations, it would appear that the director of the Park Service is accountable to the governor.

Chapter 53-07, N.D.C.C., provides for the establishment of a state outdoor recreation agency composed of the state officials specified at Section 53-07-01, N.D.C.C., (one of whom is the state parks director). This same section provides that the governor shall appoint an executive officer of the agency, but it also provides that it shall be the responsibility of the executive officer to "carry out the policies and directives of the agency and shall, within the limits of personnel and funds available, perform such other duties as may be assigned to him by the outdoor recreation agency." This language indicates that aside from the statutorily-specified responsibilities and limitations imposed upon the agency and its executive officer, the executive officer is accountable to the agency (even though the governor is designated as agency chairman and may,

apparently, remove the executive officer at his pleasure).

Because the duties of the Park Service and the Outdoor Recreation Agency both concern development and implementation of recreational policies for the state as well as the acquisition of funds therefore, the possibility presents itself that a conflict could develop between the policies of the two agencies. In such an instance the director of the Park Service and the executive officer of the Outdoor Recreation Agency would likely find himself in a conflict of interest situation if he were the same person. Incompatibility of office can exist even though a conflict arises infrequently.

Because of the possibility of a conflict of interest arising where the director of the State Park Service and the executive officer of the Outdoor Recreation Agency are the same person and where the two agencies are jointly administered under one director, it would be our observation that the holding of the two positions by the same person would create a situation involving incompatibility of office. Since at common law a public officer is prohibited from holding two incompatible offices at the same time, (see attached July 11, 1975, opinion of the North Dakota Supreme Court in Tarpo v. Bowman School District No. 1 Civil No. 9121) it would be the opinion of this office that the proposal to appoint the same person to the position of director of the State Park Service and the executive officer of the State Outdoor Recreation Agency would not be advisable.

Sincerely,

ALLEN I. OLSON

Attorney General