

**OPINION  
78-122**

March 31, 1978 (OPINION)

Mr. Stephen M. McLean

City Attorney

City of Oakes

P. O. Box 20

Oakes, ND 58474

Dear Mr. McLean:

This is in response to your letter to this office dated February 9, 1978. In your letter you bring the following facts and questions to our attention:

I am presently the City Attorney for the City of Oakes, N.D.

In April we will be holding elections for Mayor, Councilmen, and Police Magistrate. (Signed petitions must be in by March 4, 1978).

The issue has been raised whether or not any attorney who is a County Justice in a different county can be a Municipal Judge or Police Magistrate in Oakes, Dickey County, North Dakota.

N.D.C.C. Section 40-18-01 (1977 Supp.) states . . . The offices of County Justice and Municipal Judge may not be held by the same person.

Is this to be interpreted to mean one cannot hold these offices at all or can hold these 2 positions as long as they are located in different counties?

The Section of law to which you refer, that is, Section 40-18-01 of the North Dakota Century Code, is quoted herewith as follows:

40-18-01. JURISDICTION OF MUNICIPAL JUDGE. The municipal judge within a city having a population of three thousand or more shall be an attorney licensed to practice law in this state, unless no person so licensed is available in the city, and shall have exclusive jurisdiction of, and shall hear, try, and determine, all offenses against the ordinances of the city. The offices of county justice and Municipal judge may not be held by the same person. In a city with a population of less than three thousand, the municipal judge may be, but need not be, an attorney licensed to practice law in this state, nor shall be required to be a resident of the city in which he is to serve. (Emphasis added)

It appears that the specific language of Section 40-18-01 clearly prohibits the offices of county justice and municipal judge from

being held by the same person. The statute in question, especially the emphasized portion quoted above, does not appear to be ambiguous. While a case could possibly be made for holding that a county justice from a neighboring county may qualify and serve as a municipal judge, to so hold may amount to an unwarranted extension of the intent of this law. When a specific law is clear on its face, it may not be ignored under the pretext of pursuing its spirit.

Accordingly, it is our opinion that the proper interpretation of Section 40-18-01 is that a person may not be elected or appointed to the office of municipal judge of a city in North Dakota when that person is also the county justice of a neighboring county.

Sincerely,

ALLEN I. OLSON

Attorney General