

LETTER OPINION
93-L-214

June 28 1993

Mr. Mark Scallon
Dickey County State's Attorney
P.O. Box 3958, First Avenue S.
Ellendale. ND 584

Dear Mr. Scallon:

Former Dickey County State's Attorney Daniel Diemert requested an opinion regarding whether a county auditor may be appointed to the position of county superintendent of schools. He also asked, if the foregoing was authorized, whether the county commissioners may pay the county auditor also serving as county superintendent of schools less than the total mandated salary for both positions.

There is no general state statute that prohibits one person from holding more than one county office. There is also no state statute that specifically prohibits a county auditor from also being appointed to the position of county superintendent of schools. However, it is a well settled rule of common law that a person may not hold two offices at the same time which are incompatible. State v. Lee, 50 N.W.2d 124 (N.D. 1951). 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. Id. at 126. See also Tarpo v. Bowman Public School Dist. No. 1, 232 N.W.2d 67, 71 (N.D. 1975).

The duties of a county auditor and a county superintendent of schools conflict in such a way that the performance of the duties of the one interferes with the performance of the duties of the other. N.D.C.C. ? 15-06-02 provides that both the county auditor and the county superintendent of schools, along with the chairman of the board of county commissioners, are to serve on the county board of appraisers. See also N.D.C.C. ? 54-01-13.2. Because

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the same person may not serve on the county board of appraisers in both the capacity as a county auditor and a county superintendent of schools, performance of the duties of the one interferes with the performance of the duties of the other. Thus, it is my opinion that a county auditor may not be appointed to the position of county superintendent of schools because the two offices are incompatible. Consequently, the second question need not be considered.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

DAB/mh