

OPINION
44-72

January 22, 1944(OPINION)

MEMBERS OF LEGISLATURE

RE: Eligibility to other offices

I have your letter of January 21, relative to the eligibility of members of the last session of the Legislative Assembly to state or county office, and also inquiring as to their eligibility to be elected as members of the Legislative Assembly at the coming election.

The attorney general and his assistants are limited in their authority to give legal opinions to rendering such opinions to state officials, to state's attorneys and to members of the Legislative Assembly. However, since the question you raise is one of vital importance and of state-wide interest, I feel that the inquiry should be answered.

Your first inquiry is whether any member of the 1943 Legislative Assembly, which voted to increase the salaries of elective state officials, are eligible for any state office, the salary of which was increased by that assembly, at the elections in 1944. Section 39 of the Constitution of the state of North Dakota provides: "No member of the Legislative Assembly shall, during the term for which he was elected, be appointed or elected to any civil office in this state...the emoluments of which shall have been increased during the term for which he was elected; . . ."

Under this provision, no member of the Legislative Assembly is eligible to be elected to any civil office, the salary of which was increased by the last session. The prohibition is against being elected, not against holding the office, and therefor, the argument that such officer will not take office during the term for which he was elected is of no value. Such person would still have to be elected in 1944, which would be during the term for which he was elected as a member of the Legislative Assembly.

An almost identical situation was before the Supreme Court of the state of Washington in the case of State v. Howell, 126 Pac. 954. The Constitution of the state of Washington declares judges of certain courts "ineligible to any office", other than a judicial one, "during the term for which they shall have been elected". The Supreme Court of the state of Washington held that a member of the court was ineligible as a candidate for governor, even though his term as governor would not commence until the term for which he was elected as judge had expired.

It is therefor my opinion that under the provisions of our Constitution, above-cited, members of the 1943 Legislative Assembly cannot be elected to any state office this year, where the emoluments of that office were increased by the last Legislative Assembly.

You also inquire what the effect of this section would be on the candidacy of any of the members of the Legislative Assembly for county office. The constitutional provision in question provides that no member of the Legislative Assembly shall be appointed or elected "to any civil office in this state". That would clearly include county offices, where the emoluments of such county offices were increased by the last assembly.

Your last question is what effect will section 39 of the state Constitution have on the re-election of any member of the state legislature to the Legislative Assembly. In order to answer this question, I believe we should try to discover what the purpose of the framers of the Constitution was, in enacting section 39. Clearly, the only logical purpose of such a provision is to prevent the members of the Legislative Assembly from increasing the emoluments of certain offices in order to become candidates for such offices, or be appointed to such offices, if the office is an appointive one. Certainly it was never contemplated that if the members of the Legislative Assembly should submit a constitutional amendment to the people of the state for ratification or rejection, which would provide for increased remuneration for members of the Legislative Assembly, that by such act of submitting such constitutional amendment, every member of the Legislative Assembly would automatically become ineligible to succeed himself. Such a conclusion would be ridiculous on the face of it, and it is my opinion that the constitutional provision, even though in its terms it appears to be broad enough to include members of the Legislative Assembly, since the office of a legislator is clearly a civil office in the state, would not prohibit a member of the Legislative Assembly from being a candidate for the legislature. I am satisfied that this is the only reasonable interpretation to place upon the provision in question, and that any court would adopt such review.

In order that there might be absolutely no question on the eligibility of a member of the last Legislative Assembly to be a candidate for the legislature this year, such proposed constitutional amendment increasing the salary of legislators could be submitted to the people at the November general election. The act itself does not provide whether it should be submitted to the people at the primary or the general election, and in my opinion it can be submitted at either election. If submitted at the general election in the fall, then there clearly can be no doubt as to the eligibility of a member of the last assembly as a candidate for the legislature, because at the time he is elected in November, the salary will not as yet have been increased. Clearly, he will be eligible as a candidate for the legislature. If eligible as a candidate, and he is elected, he clearly cannot be declared ineligible thereafter, because the people at the same election have approved an increase in his salary. The prohibition of the constitutional provision is against the election of any member of the assembly to civil office, the emoluments of which were increased during his term. Since such emoluments will not have been increased at the time he is elected, he can be legally elected and hold office, even though we should adopt the more narrow view and hold that section 39 of the Constitution applies to a candidate for the legislature.

It is, therefore, my opinion that section 39, in any event, will not prevent a member of the last legislative assembly from succeeding himself or from running for another office in the Legislative Assembly. However, if the constitutional amendment, increasing the salaries of members of the Legislative Assembly, is submitted at the fall election, then regardless of

whether we adopt a broad or a narrow view in interpreting section 39, such members of the assembly will clearly be eligible under either interpretation.

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