

OPINION
46-178

April 3, 1946 (OPINION)

LEGISLATIVE MEMBERS

RE: While Such May Not be Candidates for Other Offices

This will acknowledge your recent letter relative to the eligibility of Robert Greiser as a candidate for state treasurer and William A. Thatcher for insurance commissioner to seek those offices. Both of these men are at the present time state senators. They were elected at the general election on November 3, 1942 for a four year term from their respective districts, and have been serving in that capacity since January, 1943. Their terms will expire January 1, 1947. During their term and while they were members of the senate, the emoluments of the offices which they seek were increased. Chapter 202 of the 1943 Session Laws increased the salary of the governor, lieutenant governor, attorney general, secretary of state, state auditor, state treasurer, superintendent of public instruction, commissioner of agriculture and labor, and commissioner of insurance. The commissioner of insurance and the state treasurer now receive Thirty-three hundred dollars a year as salary. Prior to the enactment of chapter 202 of the 1943 Session Laws, the salary of the commissioner of insurance and the state treasurer was Twenty-four hundred dollars a year as provided by an initiated measure enacted by the people of the state of North Dakota on November 8, 1932, and found on page 504 of the 1933 Session Laws. The salary statute for the state treasurer is now found in section 54-1113 of the North Dakota Revised Code of 1943, and as to the insurance commissioner, it is found in section 26-0103 of the North Dakota Revised Code of 1943.

Section 39 of the constitution of the state of North Dakota reads as follows:

"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, which shall have been created, or the emoluments of which shall have been increased, during the term for which he was elected; *****"

In the report of the attorney general to the governor covering the period from July 1, 1942 to June 30, 1944, on page seventy-two thereof, is printed an opinion, dated January 22, 1944, that was issued out of this office during the last term of the former attorney general, Mr. Struts, dealing with this question. All of the opinion is not pertinent to your question, but much of it is. On page 73 thereof, the following appears:

"It is my opinion that under the provisions of our constitution, above cited, (referring to section 39 of the constitution of the state of North Dakota), members of the 1943 legislative assembly cannot be elected to any state office this year, where the emoluments of the office were increased by the legislative assembly."

The opinion is quite lengthy. It is not necessary for me to set it forth here in full. Suffice it to say that the present staff of the attorney general's office agrees with that opinion.

Since Mr. Greiser and Mr. Thatcher were elected for a term of four years and served as such when the emoluments of the offices to which they now seek election were increased during their term, under the provisions of our constitution as set forth, they are ineligible to seek and hold such offices.

Inasmuch as both Mr. Greiser and Mr. Thatcher are ineligible to hold the offices which they now seek, it would serve no purpose to allow them to file petitions seeking the offices of state treasurer and insurance commissioner.

It is, therefore, the opinion of this office that should they present petitions prior to April 16, 1946, requesting that their names be placed on the primary ballot for the respective offices of state treasurer and insurance commissioner, you would be justified in refusing to file such petitions.

It is the opinion of this office that under section 39 of the constitution of the state of North Dakota they are not entitled to be elected to the offices that they seek, and that should they be elected, they are barred by the constitutional provision from serving as such. The constitutional provision is plain and specific. Both these men were members of the legislative assembly during the 1943 session when the emoluments of the offices they now seek were increased from Twenty-four hundred dollars to Thirty-three hundred dollars a year. In the case of State v. Howell, 126 P. 954, it was held that a member of the supreme court of the state of Washington was ineligible as candidate for governor even though his term as governor would not commence until the term for which he elected as judge had expired. The holding in that case is applicable to your inquiry. Neither Mr. Greiser nor Mr. Thatcher would be eligible to hold the offices which they now seek, assuming that they could be elected, even though their terms as state senators expire January 1, 1947.

Since Mr. Greiser and Mr. Thatcher are both ineligible to hold the offices they seek, assuming that they would be elected, it is the opinion of this office that you should refuse to file their petitions.

NELS G. JOHNSON

Attorney General