

**OPINION  
46-218**

March 16, 1946 (OPINION)

OFFICES

RE: Compatibilities

Mr. F. L. Monroe has requested the attorney general to give his opinion on the following questions:

1. Is a person eligible for election to the office of mayor of a city if he is not owner of property therein?
2. May the same person hold the office of mayor of a city and also be a member of the school board of the school district embracing the same territory as that of the city?

In answer to your first question, I beg to advise you that any person who is a qualified voter in a city is eligible for election to the office of mayor thereof. Neither the state constitution nor statutes impose a property qualification to hold this office.

The question as to whether or not a person can hold the office of school director and also hold the office of mayor is not easy to answer. This question has apparently not been passed upon by the Supreme Court of this state. And there is a conflict of opinion in the decisions of other states. Thus, in the case of Wood v. Board of Election Commissioners, 269 Mass. 67, 168 N.E. 181, the Supreme Court of Massachusetts declared the office of mayor and office of school committeeman incompatible.

Two officers are said to be incompatible when the holder cannot in every instance discharge the duties of each. Incompatibility arises, therefore, from the nature of the duties of the office when there is an inconsistency in the functions of the two, where the functions of the two are inherently inconsistent or repugnant, or when antagonism in the functions would result in the attempt by one person to discharge the duties of both offices, or where the nature and duties of the two offices are such as to render it improper from consideration of public policy for one person to retain both. The sure test is whether the two offices are incompatible in their natures, in the rights, duties, or obligations connected with or flowing from them." McQuillan Municipal Corporation, Second Ed. Revised Vol. 2, p. 143, sec. 469.

It may be said as a general proposition that it is not good public policy for a person to hold two elective offices within the same territorial limits even though such offices are held in separate and independent municipal corporations.

However, I cannot find that there are any conflicting interests in North Dakota between a school board and the governing board of a city. But there may, for example, be a conflict in the time of

meeting of the two boards. They may meet at the same time, thus making it impossible for a person to attend both meetings. Because of such practical considerations, it is my opinion that it would be inadvisable for a person to hold the office of mayor and at the same time function as a member of the city school board. However, as stated above, I cannot find that the two offices are incompatible in that their functions conflict. The only statutory restriction is found under section 40-0809 of the North Dakota Revised Code of 1943, which reads as follows:

"No member of the city council shall be eligible to any other office the salary of which is payable out of the city treasury, nor shall he hold any other office under the city government. . ."

You will note that section 40-0809 does not prohibit a member of the city council from serving as a member of the school board.

NELS G. JOHNSON

Attorney General