

**OPINION
51-121**

February 6, 1951 (OPINION)

OFFICERS

RE: Incompatibility

Your letter of January 24, 1951, has been received.

You would like to know if one individual may hold the office of county judge, juvenile commissioner, and justice of the peace, drawing full compensation as provided by law in the way of a salary from the county for the office of county judge, drawing in addition thereto per diem approved by the district court as juvenile commissioner, and further, drawing from the county the fees permitted to a justice of the peace.

The holding of one office does not of itself disqualify the incumbent from holding another office at the same time if there is no inconsistency in the functions of such offices, but an officer is prohibited from holding two incompatible offices at the same time. The question of incompatibility depends on the circumstances of the individual case, and conflict of interest is generally the determining factor. In determining the conflict of interest the powers granted and the functions actually performed should be considered.

Section 111 of the constitution of North Dakota provides that the county court has the exclusive original jurisdiction in probate and testamentary matters. The powers of the county court are listed in section 27-0709 of the North Dakota Revised Code of 1943.

Section 112 of the constitution of North Dakota establishes the jurisdiction of the justices of the peace. Section 33-0119 of the North Dakota Revised Code of 1943 provides that every justice of the peace must make quarterly reports to the county commissioners of his county. Appeal from justice court is to the district court.

Section 119 of the constitution of North Dakota prohibits judges of the supreme or district courts from being elected or appointed to any other than judicial offices, but makes no reference to county judges or justices of the peace.

Chapter 27-16 of the North Dakota Revised Code of 1943 provides that the juvenile commissioners are appointed by the judges of each judicial district. The powers of the commissioner are listed in section 27-1602. The chapter also provides that the salary of the commissioner shall be fixed and approved by one of the judges of the judicial district, and that the commissioner must furnish reports on the administration of his office to the district court.

After examining the above-noted laws, it is our opinion that there is no legal incompatibility among the offices of county judge, justice of the peace, and juvenile commissioner.

You will note, however, that section 27-0715 provides that the judge of each county court shall keep his office open at all proper times and during reasonable hours for the purpose of holding court and transacting business as prescribed by law, and that section 33-0102 provides that a justice court is deemed to be open always.

Under these sections, it is possible that a practical incompatibility could exist. Even though there exists no legal incompatibility with the duties of another office, the offices may be incompatible with judicial duties if they will, or may, reasonably tend to interfere with the due administration of law. The purpose of these sections is apparently to provide speedy and due administration. If, by occupying more than one position, the administration of the other judicial position is slowed by interference of the second office, then of course a practical or physical incompatibility would exist. We are unable to determine whether or not such incompatibility exists in the present case from the facts set forth.

It is our opinion that if the duties of the other offices or employment are such that they do not tend to interfere with the due administration of the law by the county judge, then the positions of juvenile commissioner, justice of the peace, and county judge are not incompatible, and further, that one individual may serve in all of those capacities.

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