

OPINION
55-22

May 9, 1955 (OPINION)

CITIES

RE: City Treasurer - Compensation As Ex Officio Treasurer of
Park District

This office acknowledges receipt of your letter of May 5, 1955, asking for our opinion as to whether or not the city treasurer of the city of Grand Forks would be such an employee of the park district of that city so as to warrant the park board to pay to the city treasurer special compensation for the duties performed for the said park board.

As you have set forth in your communication, section 40-1701 of the North Dakota Revised Code of 1943 provides for the payment of the salary of the city treasurer and that such salary shall be fixed by the governing body of the city. Then section 40-4908 provides that the city treasurer shall be ex officio treasurer of the park district. Further, section 40-4912 of the North Dakota Revised Code of 1943 authorizes the park board to hire employees and to pay for their services. The question which you have presented is: In as much as the city treasurer is also the treasurer of the park board, may he be considered an employee and thus be paid for under section 40-4912?

In checking McQuillin on Municipal Corporations, we find many divergent opinions as to whether an office of this kind is an officer or an employee. However, after looking into this matter we have come to the conclusion that the city treasurer is an officer and not an employee. His appointment is provided for by statute and his duties are prescribed by law and he must furnish a substantial bond while he is so engaged. It also appears that the park board has no choice as to the employment of the treasurer because he is by law made ex officio treasurer of the park district. In checking up in Webster's Dictionary as to the meaning of ex officio, we find that it defines such term as follows: "by virtue or because of an office; officially." Taking all these things into consideration, this office is of the opinion that the city treasurer is an officer of the city and also an officer of the park district and may not be paid any additional compensation for his services to the park district prescribed for by law.

LESLIE R. BURGUM

Attorney General