

**OPINION
62-74**

January 2, 1962 (OPINION)

COUNTY JUSTICE

RE: County Judge - Compatibility of Offices

This is in response to a question presented by Mr. Lowe, one of your deputy examiners, which you in turn referred to this office.

From the information submitted, it appears that the Richland County Judge was also appointed County Justice on June 27, 1961, to act in such capacity effective July 1, 1961. As reported by Mr. Lowe, "His salary was set at two thousand dollars per annum, payable monthly, which is included with the amount of salary he receives as County Judge." We are assuming that the County Judge is receiving an additional salary of two thousand dollars to act in the capacity of County Justice.

The first item which we must consider is whether or not the offices of County Judge and County Justice are incompatible. Upon examining section 27-07-02, it is found as is material here that "In a county not having a county court of increased jurisdiction, the jurisdiction and powers formerly vested in the Justice of the Peace are hereby conferred concurrently upon the county court, unless and until a County Justice is appointed." To us, it would appear that the Legislature did not deem these two offices to be incompatible. It would also follow that if the offices are combined in one where the county does not have a county court of increased jurisdiction and where the office of County Justice has not been created, that the offices should not be incompatible after the office has been created. In the one instance, pursuant to statutory provision, the same person performs the same duties without the creation of a new office. "The mere fact that a new office or title is added to the person does not in itself make the office incompatible with the other." Thus, the only question remains - whether or not the County Justice may receive an additional salary as County Justice after the office has been created.

As to the salary of the county judge, section 27-07-12 provides that "The County Judge of any county court of this state not having increased jurisdiction for official services rendered shall receive a salary determined as provided in section 11-10-10". Section 11-10-10 as is material here merely provides that "The County Judge shall receive an annual salary payable monthly for official services rendered on a formula determined by the population of the county."

It is also noted that chapter 27-18 of the N.D.C.C. merely provides that the County Justice shall receive as full compensation an annual salary not exceeding the sum of three thousand dollars. As to the exact amount, it is left to the determination of the Board of County Commissioners.

From examining the provisions pertaining to salaries of the County Judge and County Justice, we find that there is no statutory or

constitutional provision of law which would prohibit one person from holding both offices and receiving a salary for both. In Congdon, v. Knapp, 187P 660, the Court said, "Unless prohibited by constitutional provision or statutory law, one person may hold two offices if their duties are not incompatible with each other." It further said, "and in the absence of such prohibition, if one person holds two offices, the performance of the duties of either of which does not in any way interfere with the duties of the other, he is entitled to the compensation fixed by law for both." The offices involved here were hotel commissioner and assistant chief food and drug inspector.

A similar conclusion was reached in STATE ex rel - Chatterton v. Grant, 73P 470. In this instance, it involves the question whether the Secretary of State as acting Governor could receive salaries for both offices. The Court held that he could.

In accordance with the foregoing, it is our view that a County Judge may accept an appointment of County Justice and receive an additional salary to be determined by the County Commissioners, but not to exceed three thousand dollars per year.

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