

40-08-09 ✓  
2-06-02

May 14, 1982

Mike L. Halpern  
City Attorney  
City of Glen Ullin  
Glen Ullin, North Dakota 58631

Dear Mike:

Thank you for your letter dated April 21, 1982, regarding whether a city councilman may also serve as a member of the city's airport authority.

Section 40-08-09 of the North Dakota Century Code states:

40-08-09. RESTRICTIONS ON MEMBERS OF COUNCIL.--No member of the city council shall:

1. Be eligible to any other office the salary of which is payable out of the city treasury;
2. Hold any other office under the city government; or
3. Hold a position of remuneration in the employment of the city.

The restrictions contained in subsections 1 and 3 of Section 40-08-09, N.D.C.C., do not apply in this case in that the commissioners of a municipal airport authority receive no compensation for their services pursuant to Section 2-06-06, N.D.C.C. The remaining question then is whether the municipal airport authority is an office under city government.

Section 2-06-02, N.D.C.C., provides for the creation of a municipal airport authority. Section 2-06-02, N.D.C.C., states in part:

Any municipality may, by resolution of its governing body, create a public body corporate and politic to be known as a municipal airport authority, which shall be authorized to exercise its functions upon the appointment and qualification of the first commissioners thereof; . . . (Emphasis supplied.)

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A municipal airport authority is a separate public body and has general powers to carry out the purposes of Chapter 2-06 pursuant to Section 2-06-07, N.D.C.C. In addition, an airport authority is authorized to adopt, amend and repeal rules as it deems necessary for the management, government and use of any airport. Therefore, a municipal airport authority is not an office under city government. Consequently, Section 40-08-02(2), N.D.C.C., also does not apply in this particular case.

Since the restrictions on members of a city council as set forth in Section 40-08-02, N.D.C.C., are not applicable, a city councilman may serve as a commissioner of that city's airport authority. It should be noted that if a city councilman is a candidate for an appointment as a commissioner of a municipal airport authority, that councilman should disqualify himself and not participate in the appointment process.

Sincerely,

David H. M. Kautzmann  
Assistant Attorney General

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