

N.D.A.G. Letter to Mahoney (June 25, 1986)

June 25, 1986

Mr. John J. Mahoney
Oliver County State's Attorney
Oliver County Courthouse
Center, ND 58530

Dear John:

Thank you for your letter of June 13, 1986, further discussing the prohibition against a person accepting a nomination to more than one office as found in N.D.C.C. 16.1-12-03. I appreciate your thoughts on this matter and your taking the time to express these additional concerns to me.

As I understand your position, you believe that the Office of State's Attorney is not subject to the prohibition found within N.D.C.C. 16.1-12-03 insofar as the Office of State's Attorney is a no-party office. Your authority for the proposition that the prohibition found within N.D.C.C. 16.1-12-03 is not applicable to no-party offices is the fact that N.D.C.C. 16.1-12-02 provides for the certificates of nomination by petition at general and special elections except those offices appearing upon the no-party ballot.

I am afraid that I must respectfully disagree with your position. It is true that N.D.C.C. 16.1-12-02 provides for the certificates of nomination for nominees for an office to be filled at an election except for no-party offices. This particular limitation, however, does not affect the other statutes found within N.D.C.C. Ch. 16.1-12. Other sections within this particular chapter discuss both party as well as no-party offices. In view of the broad and unambiguous language employed by the Legislature in prohibiting the person from accepting a nomination "to more than one office," I am unable to limit the scope of such language by any other distinctions which may be made with the same chapter in which this particular statute is found. As stated by our North Dakota Supreme Court, there is no room for rules of statutory construction where the words of a statute are plain and unambiguous. Fredrickson v. Burleigh County, 139 N.W.2d 250 (N.D. 1965).

Therefore, it is my opinion that no-party offices as well as party offices are covered by the prohibition contained within N.D.C.C. 16.1-12-03 as to a person accepting a nomination to more than one office.

I am aware that there is some concern among several members of the Legislature as to whether the result of the application of the clear and unambiguous words of this particular statute achieve the desired result as designed by the Legislature in passing this law. It is possible that legislative review may occur at the next session of the Legislature as to this subject and as to the prohibition against a person participating in the nomination of more than one person (i.e., signing more than one petition for nomination for the same office).

For these reasons, I have taken the liberty of forwarding a copy of your letters and my responses thereto to Senator Wayne Stenehjem.

Sincerely,

Nicholas J. Spaeth

cc: Wayne Stenehjem (w/enc.)