

Overruled by N.D.A.G. 94-F-14

Date Issued: April 14, 1982 (AGO 82-29)

Requested by: Representative Michael B. Unhjem

- QUESTION PRESENTED -

Whether a mayor of a city may also hold the position of public administrator in a county government.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that a mayor of a city may also hold the position of public administrator in a county government.

- ANALYSIS -

There are a number of statutes in this state which concern conflict of interest provisions applicable to those who hold public office. See, e.g., sections 15-29-08(10), 15-49-02, 11-09-47, and 48-02-12 of the North Dakota Century Code. None of these, however, are applicable to the situation where one person holds both a city office and a county office at the same time. In addition, none of these statutes constitute a general conflict of interest statute.

Our Supreme Court has adopted the common law rule that a conflict of interest does exist between two public offices when the duties of those offices are incompatible with one another. Tarpo v. Bowman Public School District No. 1, 232 N.W.2d. 67 (N.D. 1975); State v. Lee, 50 N.W.2d. 124 (N.D. 1951).

The theory of incompatibility announced by these two Supreme Court decisions may be stated as follows:

The two offices or positions are incompatible when one has the power of appointment to the other or the power to remove the other, and if there are many potential conflicts of interest between the two, such as salary negotiations, supervision and control of duties and obligations to the public to exercise independent judgment. 232 N.W.2d. 67, 71.

The mayor of a city acts as its chief executive officer. The public administrator for the county acts as the administrator and guardian for estates of deceased persons in those cases listed in section 11-21-05, N.D.C.C. These public offices do not have the power of appointment to the other nor do they have the power to remove the other. Duties such as negotiations, supervision, and control of duties and obligations to the public, are not placed in conflict when one person holds either of these offices.

Therefore, it is my opinion that it would not be incompatible for one person to hold the office of mayor and public administrator in a county government.

- EFFECT -

This opinion is issued pursuant to section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the question presented is decided by the courts.

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