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DIGEST OF ATTORNEY GENERAL OPINIONS

PETITION FOR NOMINATION OF ELECTIVE OFFICIAL IN MUNICIPALITIES—SIGNATURE REQUIRED—CONTENTS

March 2, 1964

Whether an elector may sign the petition of more than one person seeking the office of alderman in a city election.

The opinion states: "Section 40-21-07 of the North Dakota Century Code provides that a candidate for any public office in a city may be nominated by filing with the city auditor a petition signed by not less than ten per cent of the qualified electors residing within the ward or precinct. No elector shall sign more than one petition for the same office."

"The language, 'no elector shall sign more than one petition for the same office' is a provision of law to prevent individuals from indiscriminately signing petitions for the same office. The term 'office' has a flexible meaning, depending upon the context in which the term is used. The term 'office' in this instance applies to the vacancy. The office, in reality, is that of councilman individually and not collectively."

The opinion concludes: "under the facts given there are two offices to be filled. It is therefore our opinion that a person may sign the petition of two persons seeking the office of councilman. Should a person sign the petition of more than two persons (there being only two offices to be filled), the signature of such person can be voided on every petition."

MOTOR VEHICLES—OPERATOR'S LICENSE— CITY ASSESSING A FINE FOR FAILURE TO CARRY

March 4, 1964

Whether section 39-06-16 of the North Dakota Century Code supersedes a city ordinance assessing a fine for

failure to carry an operator's license even though a valid license is subsequently produced.

The opinion states: "Section 8-02-08 of the City Code provides [that] every operator of a motor vehicle shall at all times carry his license and registration as provided by state laws, when operating a motor vehicle along the public highways of this city "

"Section 39-06-16 of the North Dakota Century Code, as amended, provides: Every licensee shall have his operator's license or permit in his immediate possession at all times when operating a motor vehicle and shall display the the same upon demand of any court, police magistrate, However, no person charged with violating this section shall be convicted if he produces in court an operator's license or permit theretofore issued to him and valid at the time of his arrest."

"The City Ordinance is more restrictive in that the police magistrate could assess a fine in the event the individual did not have the license on his person, although the State law appears to prohibit prosecution if the person produces the license at some later date."

"[I]t would appear the ordinance enacted by a municipality with regard to this matter could not be substantially different than the State law "

The opinion concludes: "It is therefore our opinion that section 39-06-16 of the North Dakota Century Code, as amended, supersedes a municipal ordinance insofar as the matter of motor vehicle operators' licenses are concerned. If the person charged with failure to have in his possession a valid operator's license subsequently produces a license valid at the time he was so charged, the charge must be dismissed. "

STATE HIGHWAY DEPARTMENT RECORDS—
AUTHORITY AND OBLIGATION TO FURNISH
TO INDIVIDUALS AND LEGISLATORS

March 9, 1964

Whether the State Highway Commissioner must furnish Department records to individuals or legislators.

The opinion states: "Section 24-02-11 specifies that the files and the records of the department shall be open to public inspection under reasonable regulations. Section 44-04-18 of the North Dakota Century Code provides that all records of public or governmental bodies, boards, bureaus, commissions of the state shall be public records open and accessible for inspection during reasonable office hours."

The opinion concludes: The State Highway Commissioner "must make Highway Department records available for inspection during reasonable office hours and [he] may prescribe reasonable regulations under which such inspection may be conducted."

COUNTY REGISTRAR OF DEEDS—
UNEXPIRED TERM—CONFLICT OF INTEREST

April 24, 1964

Whether a Board of County Commissioners may appoint a successor to fill an unexpired term of the Registrar of Deeds.

And whether one who has a part ownership in an abstracting company may serve as Registrar of Deeds and manager of the abstract company simultaneously

The opinion states: "Section 44-02-04 of the North Dakota Century Code, as amended, provides: A vacancy in any county office, other than that of county commissioner, shall be filled by the board of county commissioners. Section 173 of the North Dakota Constitution, as amended,

provides in part that the registrar of deeds shall hold his office for a term of four years and until his successor is elected and qualified. There is no provision limiting the appointment made by the county commissioners under section 42-02-04 to the next regular election nor is there any provision for a person to be elected at the next regular or special election to fill out the term."

"[A]n appointment made by the board of county commissioners to fill a vacancy in the office of registrar of deeds is an appointment for the unexpired term."

The opinion continues: " the registrar of deeds is required, upon request, to continue abstracts and may charge a fee for the same to be turned over to the county treasurer. The abstracter, is, of course, entitled to retain the fees he is permitted to charge by statute. Section 44-04-17 of the North Dakota Century Code makes it a misdemeanor for any public officer to use his office or position for the purpose of effecting the sale or purchase of any service for which he will benefit financially. A person who would hold the office of registrar of deeds and, at the same time, serve as county abstracter, would be open to charges of violation of this statute "

The opinion concludes: "It is the possibility of a conflict which makes the positions incompatible [A]lthough there is no statutory provision prohibiting the county abstracter from holding the office of registrar of deeds the county abstracter should not be appointed to the office of registrar of deeds the situation would raise an apparent conflict of interest."

SCHOOL DISTRICTS—BORROWING MONEY TO PURCHASE A TEACHERAGE

May 23, 1964

Whether a school district may borrow money to set up a teacherage (teacher's dwelling)

The opinion states: "Section 15-29-08 (5) of the North Dakota Century Code, as amended, provides that school boards have the power and authority 'To purchase teacherages.' This section authorizes the school district to borrow money in the manner specified by statute, i.e., issuance of bonds, certificates of indebtedness, state school construction fund, for the purchase of a teacherage. It does not authorize the school district to make an ordinary loan from a bank or lending agency for the purchase of a teacherage."

The opinion concludes: "School districts, being creatures of the Legislature have only such powers as are expressly granted by statute or necessarily implied therefrom. Since the Legislature has specified the manner in which a school board or school district may incur a debt such specification excludes any other procedure."

