
Ford A. Peterson

74378 CSAH 6 Dassel, MN 55325

Office 320-275-2004

E-Mail: ford@highmarks.com

Fax 800-737-1081

Outstate 800-350-8918

Date: December 15, 2010

To: Paul Virnig
Stephanie Beckman
Barb Loch
Wally Strand
Amy Wilde
Jim Swenson
Dave Gabrielson
Rony Kutzky
Tim Benoit

From: Ford Peterson

Re: Strand and Wilde's automatic resignation from the HRA Board

INCOMPATIBLE OFFICES

In a phone conversation with Paul Virnig on Tuesday, December 14, 2010, I suggested that Wally Strand's HRA Board appointment terminates the day he accepts a certificate of election to an office considered incompatible with the previously held job or office. It was apparent that Mr. Virnig disagreed with my assessment of the situation and that there would be no 'automatic resignation' from the HRA.

Although many believe this to be a dead issue, it's not. And my reasoned argument is not without basis.

In October 2005, our MN State Legislature conducted an analysis of the Compatibility of Offices (see attached). On page 2 we find the definition of "Incompatible" and "Office" to be:

Compatible and Incompatible Offices Defined

"Compatible" is a legal term applied to a combination of public offices that can be occupied simultaneously by one person without creating a conflict of interest.

"Incompatible," when applied to a combination of public offices, means that a conflict of interest would exist if one person held them at the same time.

"Office," in this context, includes all elected offices and those appointed positions that have independent authority under law to determine public policy or to make a final decision not subject to a supervisor's approval. *McCutcheon v. City of St. Paul*, 216 N.W.2d 137, 139 (Minn. 1974).

On page 3 we find that if he accepts a certificate of election, the matter is treated as if the individual had resigned from that first position.

Seeking or Holding Incompatible Offices; Automatic Resignation

Unless otherwise limited by law, an individual may apply for a job or run for an office incompatible with a current position without resigning from the current position. Op. Att’y Gen. 358-E-6, Feb. 18, 1958. However, if he or she accepts a position or receives a certificate of election to an office considered incompatible with the previously held job or office, the matter is treated as if the individual had resigned from the first position. *Hilton v. Sword*, 157 Minn. 263, 196 N.W. 467 (1923).

Serving in either position without pay does not eliminate the incompatibility of the offices because there is continuing potential for conflict between the duties of the two offices, according to an attorney general ruling.

On page 8 we find that in 2005, the MN Legislature’s House Research concluded that the position of County Commissioner is incompatible with that of a County Housing Redevelopment Authority.

County Commissioner		
County Housing Redevelopment Authority member	I	Op. Att’y Gen. 358a-3, Nov. 29, 1976

Apparently, Meeker County Attorney Beckman previously, but fallaciously concluded that the Op Att’y Gen 358a-3, Nov. 29, 1976 no longer applies because of the change in the wording of 375.09 in 1986 prohibiting a county commissioner from holding “another elected office,” falsely concluding that Commissioners Wilde and Strand can be appointed by the county board and hold both offices. Beckman’s error has tragically created a conflict of interest that continues to this day. Apparently the MN State Legislature, in 2005, did not see the reading of statute in accordance with Beckman’s opinions regarding the 1986 statutes. An error has occurred in the elections and appointments.

As noted above, the definition of “Office” includes language clearly defined as “...all elected offices and *those appointed positions*...” By definition, the current HRA position falls under the definition and therefore is an incompatible office by Beckman’s own arguments.

The grave errors in these appointments have many tragic consequences for Meeker County. Instead of following the law, and avoiding all practical good judgment, we find the on-going tragedy playing out on the evening news over-and-over. What a shameful embarrassment to Meeker County!

Although the correct reading of the law indicates Wilde and Strand have been falsely serving as County Commissioners since they accepted their appointment to the HRA Board, (they should be considered to have resigned when they accepted their appointed positions), I suspect a better solution would be to consider this an error in appointments and ask them to resign from the HRA board, effective immediately. At a minimum, I fully anticipate that Mr. Strand will be expected to follow state law and will be considered to have resigned from the HRA, effective January 4, 2011.

Whatever the conclusion on this matter, the people of Meeker County are best served when Wilde and Strand are off the HRA Board.