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February 28, 2019

David J. Larson  
Buffalo County State's Attorney  
P.O. Box 131  
131 S. Main Street  
Chamberlain, SD 57325

**Official Opinion No. 19-01**

Re: **Commencement of Term of Office for a Combined County Office**

Dear Mr. Larson,

In your capacity as State's Attorney for Buffalo County you have requested an official opinion from the Attorney General's Office on the following question:

**QUESTION:**

1. When the offices of Auditor and Register of Deeds have been combined, may the person newly elected to the combined office assume the Register of Deeds position in January and the Auditor's position in March?

**ANSWER:**

1. By operation of SDCL 7-7-1.3, the term of office for the combined office of Buffalo County Auditor and Register of Deeds commences on the first Monday in January.

**FACTS:**

Several years ago, Buffalo County combined the offices of Auditor and Register of Deeds under the authority granted to them by state statute. Generally, the term of office for county elected positions – including the Register of Deeds – begins on the first Monday in January. Different from most other offices,

however, the term of office for the county Auditor begins on the first Monday in March. The question has arisen whether an individual elected to the combined county office may assume the office of Register of Deeds in January, and then assume the office of Auditor in March?

**IN RE QUESTION:**

According to SDCL 7-7-1.2. “[t]he board of county commissioners may, by ordinance, combine two or more county offices and that one person shall be elected to, and perform the duties of, the combined offices.” Further, SDCL 7-7-1.3 requires that “an officer” be elected to fill the “combined office” created by the county’s action under SDCL 7-7-1.2.

When interpreting statutes, the state Supreme Court has explained:

[W]e begin with the plain language and structure of the statute. When the language in a statute is clear, certain and unambiguous, there is no reason for construction, and the Court’s only function is to declare the meaning of the statute as clearly expressed. When we must, however, resort to statutory construction, the intent of the legislature is derived from the plain, ordinary and popular meaning of the statutory language.

*In re Wintersteen Revocable Trust Agreement*, 2018 S.D. 12, ¶ 12, 907 N.W.2d 785, 789 (citations omitted). The purpose of statutory construction is to discover a statute’s true intent primarily through an analysis of its language. *In re Estate of Ricard*, 2014 S.D. 54, ¶ 8, 851 N.W.2d 753, 755-56. The intent of a statute “must be determined from the statute as a whole, as well as enactments relating to the same subject.” *In re Taliaferro*, 2014 S.D. 82, ¶ 6, 856 N.W.2d 805, 806-07 (citations omitted).

SDCL 7-7-1.2 indicates that one person will “be elected to, and perform the duties, of the combined offices.” SDCL 7-7-1.3 directs that an “*officer*” be elected to fill the “combined *office*.” In reading the two statutes together, I conclude that when a county combines offices under SDCL 7-7-1.2 the county creates one combined office to be filled by one elected official.

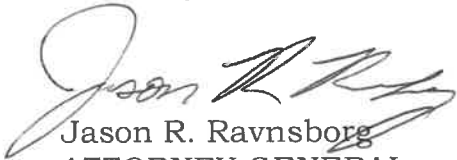
Generally, elected county officials commence their term of office on the first Monday in January following their election. SDCL 7-7-1. Elected county Auditors assume their position on the first Monday in March. *Id.* The plain language of SDCL 7-7-1.3 clearly establishes that in a combined county office the official elected to that position serves a four-year term “commencing on the first Monday in January” following their election. It is my opinion that the term of office for the combined position of Buffalo County Auditor and Register of Deeds commences on the first Monday in January.

It should also be noted that to allow an individual to assume the positions of Auditor and Register of Deeds in the manner you describe would be contrary to county ordinance. You have indicated that Buffalo County combined the positions of Auditor and Register of Deeds through an ordinance duly enacted under the authority granted by SDCL 7-7-1.2. To allow the newly-elected official to assume the offices of Register of Deeds in January, and then Auditor in March, would essentially split the combined position into two separate offices for a period of months. This would be contrary to the County's ordinance. Absent a repeal of the ordinance combining the offices, I find no statutory authority that authorizes the assumption of the offices in the manner described.

### **CONCLUSION**

By combining the offices of Auditor and Register of Deeds, Buffalo County created one combined office to be filled by one elected official. SDCL 7-7-1.3 clearly indicates that the term of office for the combined position "commenc[es] on the first Monday in January." It is my opinion that the four-year term of office for the combined position of Buffalo County Auditor and Register of Deeds commences on the first Monday in January. Allowing an elected individual to assume the Register of Deeds position in January and then the Auditor's position in March would split the combined position contrary to the County's ordinance combining the offices.

Sincerely,



Jason R. Ravensborg  
ATTORNEY GENERAL

JRR/SRB/lde