



ALAN WILSON  
ATTORNEY GENERAL

June 2, 2023

Walter H. Sanders, Jr., Esq.  
Allendale County Attorney  
PO Box 840  
Fairfax, SC 29827

Dear Mr. Sanders:

On behalf of the Allendale County Council, you are requesting an opinion from this Office regarding whether it would constitute dual office holding or create an ethical conflict for a person to concurrently serve as a county administrator and as a town administrator. We presume that your question involves the County Administrator for Allendale County and the Town Administrator for the Town of Olar. Please let us know if this is not the case.

### LAW/ANALYSIS

The South Carolina Constitution provides for dual office holding:

[n]o person may hold two offices of honor or profit at the same time, but any person holding another office may at the same time be an officer in the militia, member of a lawfully and regularly organized fire department, constable, or a notary public .... The limitation above set forth does not prohibit any officeholder from being a delegate to a constitutional convention.

S.C. Const, art. XVII § 1 A.

The South Carolina Supreme Court explains that an “office” for dual office holding purposes is:

“[o]ne who is charged by law with duties involving an exercise of some part of the sovereign power, either small or great, in the performance of which the public is concerned, and which are continuing, and not occasional or intermittent, is a public officer.”

Sanders v. Belue, 78 S.C. 171, 174, 58 S.E. 762, 763 (1907). “In considering whether a particular position is an office in the constitutional sense, it must be demonstrated that “[t]he power of appointment comes from the state, the authority is derived from the law, and the duties are exercised for the benefit of the public.” Willis v. Aiken County, 203 S.C. 96, 103 26 S.E.2d 313, 316 (1943). “The powers conferred and the duties to be discharged with regard to a public office must be defined, directly or impliedly, by the legislature or through legislative authority ...” 63C Am Jur.2d Public Officers and Employees § 5 (2009).

Segars-Andrews v. Judicial Merit Selection Commission, 387 S.C. 109, 691 S.E.2d 453 (2010).

In State v. Crenshaw, 274 S.C. 475, 478, 266 S.E.2d 61, 62 (1980), the Court provided some criteria to consider when determining if a position is an office:

Criteria to be considered ... include whether the position was created by the legislature; whether the qualifications for appointment are established; whether the duties, tenure, salary, bond, and oath are prescribed or required; whether the one occupying the position is a representative of the sovereign; among others.

According to the South Carolina Association of Counties,<sup>1</sup> Allendale County has adopted a council form of government.<sup>2</sup> In a council form of government, “the responsibility for policy making and administration of county government” is “vested in the county council.” S.C. Code Ann. § 4-9-310 (1976 Code, as amended). “The structure, organization, powers, duties, functions and responsibilities of county government under the council form shall be as prescribed in Article 1 of this chapter.” Id. There is no provision in a council form of government for a county administrator.

We have previously considered whether a county council which operated under the council form of government could lawfully delegate administrative duties to others. See Op. S.C. Atty. Gen.,

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<sup>1</sup> See [www.sccounties.org/sites/default/files/uploads/resources/forms\\_of\\_government\\_as\\_of\\_jan1\\_2023.pdf](http://www.sccounties.org/sites/default/files/uploads/resources/forms_of_government_as_of_jan1_2023.pdf).

<sup>2</sup> Although the Allendale County Government website provides otherwise, you confirmed in a prior opinion that Allendale County has a council form of government. See Op. S.C. Atty. Gen., 2018 WL 6815523 (Dec. 13, 2018); Allendale County Government website, located at <https://allendalecounty.com/government.htm>

1985 WL 259106 (Jan. 7, 1985). According to our research, a county council could delegate certain duties:

[t]he right of a county board to delegate its authority depends on the nature of the duty to be performed. Powers involving the exercise of judgment and discretion are in the nature of public trusts and cannot be delegated to a committee or agent. Duties which are purely ministerial and executive and do not involve the exercise of discretion may be delegated by the board to a committee or to an agent, an employee, or a servant.

Id (quoting 20 C.J.S., Counties, § 89).

Another treatise similarly provided:

While legislative or discretionary powers or trusts devolved by charter or law on a council or governing body, or a specified board or officer cannot be delegated to others, it is equally well established that ministerial or administrative functions may be delegated to subordinates. The law has always recognized and emphasized the distinction between instances in which a discretion must be exercised by the officer of department or governing body in which the power is vested, and the performance of merely ministerial duties by subordinates and agents.

Id (quoting McQuillin, Municipal Corporations, § 10.41).

Pursuant to section 4-9-310, a county council under a council form of government is responsible for the “administration of county government.” S.C. Code Ann. § 4-9-310. We determined in our January 7, 1985 opinion that section 4-9-310 authorized a county council to delegate certain administrative powers and duties:

The foregoing provision under the council form of government which authorizes council to perform administrative functions also gives a council, operating under this form, all of the powers contained in Article I; moreover, Section 4-9-30(6) authorizes council generally to establish such agencies, departments, etc. as

are necessary and proper. Thus, it is evident that Georgetown County Council possesses the statutory authority to delegate certain administrative powers and duties to others, including a committee of or individual members of county council. So long as Council does not delegate legislative or policy making powers to others but confines its delegation of authority to administrative and ministerial powers a court would probably conclude such delegation (including to a member of county council) is not an unlawful delegation of power.

Op. S.C. Atty. Gen., 1985 WL 259106 at 3.<sup>3</sup>

We have not been provided with the county ordinances establishing the Allendale County Administrator's duties.<sup>4</sup> Based on our 1985 opinion, however, the Allendale County Council is authorized to delegate administrative duties, but not duties involving an exercise of discretion, to the Allendale County Administrator under the council form of government. Such administrative duties would not involve an exercise of the sovereign power of the State. Accordingly, it is our opinion that the Allendale County Administrator most likely does not hold an office for dual office holding purposes.

We also must consider whether the Town Administrator for the Town of Olar holds a public office. According to the South Carolina Municipal Association Directory, the Town of Olar has a council form of government. See [www.masc.sc/municipality/olar](http://www.masc.sc/municipality/olar). In a council form of municipal government, "[a]ll legislative and administrative powers of the municipality and the determination of all matters of policy shall be vested in the municipal council." S.C. Code Ann. § 5-11-30 (1976 Code, as amended). The municipal council is specifically authorized to "hire an administrator to assist the council." S.C. Code Ann. § 5-11-40 (1976 Code, as amended). The municipal council is also authorized to establish municipal departments, offices, and agencies and to prescribe their function. *Id.* All departments, offices, and agencies are to "be administered by an officer appointed by and subject to the direction and supervision of the council." *Id.*

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<sup>3</sup> We cautioned, however, that if a county council under a council form of government created the office of county administrator and assigned it the identical duties granted to a county administrator in a council-administrator form of government, it might be deemed as having altered the governmental form without following the required statutory procedures in section 4-9-10. See Op. S.C. Atty. Gen., 1985 WL 259106 at 4.

<sup>4</sup> We do not have the ability to independently research this matter, since, to the best of our knowledge, Allendale County's Code of Ordinances are not published and therefore are not available for our review.

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We have previously considered whether a town administrator under a council form of government held an office for dual office holding purposes:

The Town of Lexington operates under the council form of municipal government, which is provided for in Section 5-11-10 et seq., Code of Laws of South Carolina (1976). Section 5-11-40 of the Code, in subsection (a) provides that “[t]he council may hire an administrator to assist the council.” No duties, qualifications, oath, salary, or tenure are provided for by statute and thus are left to the discretion of Lexington Town Council. Because the Town Council is vested with all legislative and administrative powers needed to operate town government and the determination of policy is vested in council, it would appear that all of the sovereign power is most probably being exercised by council instead of the administrator. Thus, it must be concluded that the administrator contemplated by Section 5-11-40(a) of the Code is most probably not an office for dual office holding purposes.

Op. S.C. Atty. Gen., 1988 WL 485320 at 1 (Oct. 18, 1988). Based on our prior opinion, we believe that the Olar Town Administrator most likely does not hold an office for dual office holding purposes. Accordingly, it is our opinion that an individual can serve as both the County Administrator for Allendale County and the Town Administrator for the Town of Olar without violating the dual office holding prohibition of the South Carolina Constitution.

You are also inquiring as to whether serving in both of these positions creates an ethical conflict. This Office has previously stated regarding conflicts of interest:

As a general matter, all public officials are expected to act in the best interest of the public in the performance of their duties without any interference from conflicting or competing interest. Our Supreme Court has recognized that “every public officer is bound to perform the duties of his office honestly, faithfully and to the best of his ability, in a manner so as to be above suspicion of irregularity, and to act primarily for the benefit of the public.” O’Shields v. Caldwell, 207 S.C. 194, 35 S.E.2d 184 (1945). Public employees must be above reproach and avoid even the appearance

of a conflict of interest in carrying out their duties. See Op. S.C. Atty. Gen. Dated July 25, 2002.

Op. S.C. Atty. Gen., 2003 WL 21043505 (April 3, 2003).

A conflict of interest can exist when an individual is both master and servant. We have described a conflict of interest arising from a master-servant relationship as follows:

a conflict of interest exists where one office is subordinate to the other, and subject in some degree to the supervisory power of its incumbent, or where the incumbent of one of the offices has the power of appointment as to the other office, or has the power to remove the incumbent of the other or to punish the other. Furthermore, a conflict of interest may be demonstrated by the power to regulate the compensation of the other, or to audit his accounts. Op. S.C. Atty. Gen., May 21, 2004 (quoting Op. S.C. Atty. Gen., January 19, 1994).

Moreover, our Supreme Court in McMahan v. Jones, 94 S.C. 362, 365, 77 S.E. 1022, 1022 (1913) stated:

‘[n]o man in the public service should be permitted to occupy the dual position of master and servant; for, as master, he would be under the temptation of exacting too little of himself, as servant; and, as servant, he would be inclined to demand too much of himself, as master. There would be constant conflict between self-interest and integrity.’

Thus, we recognize if a master-servant conflict exists, a public official is prohibited from serving in both roles.

Op. S.C. Atty. Gen., 2006 WL 2382449 (July 19, 2006).

While we do not have sufficient information to determine if a conflict of interest exists from a master-servant relationship or otherwise, a consideration is that the Allendale County Administrator and the Olar Town Administrator act at the direction of their respective councils.

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The Allendale County Administrator performs administrative duties which have been delegated to him by the Allendale County Council. The Olar Town Administrator assists the Olar Town Council with duties determined by the Town Council. Both positions appear to be merely carrying out the duties assigned to them without the discretion to decide if their actions are in the best interest of the public they serve. However, only a court can determine with any certainty if a conflict of interest exists.

You may wish to contact the State Ethics Commission to confirm that there are not any violations of the ethics laws.<sup>5</sup> You also may wish to confirm that Allendale County and the Town of Olar do not have any internal policies which would prevent an individual from serving in both of these positions.

#### CONCLUSION

In our opinion, an individual can serve as both the County Administrator for Allendale County and the Town Administrator for the Town of Olar without violating the dual office holding prohibition of the South Carolina Constitution.

Only a court can determine with any certainty if a conflict of interest exists when an individual serves simultaneously as Allendale County Administrator and as Olar Town Administrator. However, a consideration is that both of these positions act at the direction of their respective councils.

You may wish to contact the State Ethics Commission to confirm that there are not any violations of the ethics laws. You also may wish to confirm that Allendale County and the Town of Olar do not have any internal policies which would prevent an individual from serving in both positions.

Sincerely,



Elinor V. Lister  
Assistant Attorney General

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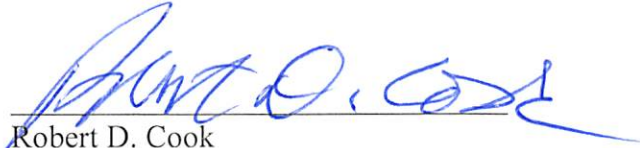
<sup>5</sup> Our Office defers to the Ethics Commission on ethical issues since it was given authority by the Legislature to interpret and issue opinions pertaining to the Ethics Act. See S.C. Code Ann. § 8-13-320(11) (1976 Code, as amended).

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REVIEWED AND APPROVED BY:

A handwritten signature in blue ink, appearing to read "Robert D. Cook", is written over a horizontal line.

Robert D. Cook  
Solicitor General