



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

August 27, 2003

William R. Neill, Deputy Director
Criminal Justice Academy Division
SC Department of Public Safety
P. O. Box 1993
Blythewood, South Carolina 29016

Dear Mr. Neill:

You have asked if it would constitute dual office holding for an individual to occupy the position of Interim City Manager/Director of Public Safety for the City of Columbia.

We conclude that it would not.

Law / Analysis

Article XVII, § 1A of the South Carolina Constitution provides that "no person shall hold two offices of honor or profit at the same time." For this provision to be contravened, a person must hold concurrently two public offices which have duties involving an exercise of some portion of the sovereign power of the State. Sanders v. Belue, 78 S.C. 171, 58 S.E. 762 (1907). Other relevant considerations are whether statutes, or other such authority, establish the position, prescribe its tenure, duties or salary, or require qualifications or an oath for the position. State v. Crenshaw, 274 S.C. 475, 266 S.E.2d 61 (1980).

Moreover, when one person holding one office of trust or profit is elected or appointed to another such office, and qualifies in the latter capacity, he thereby vacates the first office to which he was elected or appointed, and lawfully holds the second office. Walker v. Harris, 170 S.C. 242, 170 S.E. 270 (1933).

We have previously commented upon both the positions of city manager and police chief in the context of dual office holding. In Op. S.C. Atty. Gen., Op. No. 85-1 (January 4, 1985), we concluded that the position of city manager "most probably would be considered ... an office for dual office holding purposes" Moreover, in Op. S.C. Atty. Gen., May 24, 2000, we found that a police chief holds an office for purposes of Article XVII, § 1A. In that opinion, we stated that "[t]his Office has advised on many occasions that a police chief is an office holder for dual office holding purposes." There, we noted that Edge v. Town of Cayce, 187 S.C. 171, 197 S.E. 216 (1938) had so

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held as well. In addition, the South Carolina Supreme Court recently held in Richardson v. Town of Mt. Pleasant, 350 S.C. 291, 566 S.E.2d 523 (2002) that a municipal police officer is not exempt as a "constable" and thus holds an office for dual office holding purposes under the state Constitution.

However, in this instance, you have provided us with information relating to the job description of the individual in question. Such job description states that the position in question is entitled "Interim City Manager / Director of Public Safety." A description of this single position is quoted as follows:

JOB DESCRIPTION

Position Title: Interim City Manager / Director of Public Safety

Work Location: CITY OF COLUMBIA CITY HALL - 1737 Main Street

Reports To: Mayor/City Council

Department/Division: City Administrator

Nature of Work This is highly professional, managerial and administrative position. Incumbent in this position serves in the dual capacity of City Manager and as Director of Public Safety. Incumbent will be responsible for providing varied administrative assistance to the Mayor and the City Council in conducting Municipal affairs. The Incumbent areas of responsibility are to include all Public Safety functions for the City and requires the exercise of a considerable knowledge of Public safety issues, municipal organization, operations, policies and laws as well as participating in the formulation of top-level policies and decisions. This position entails a high degree of professionalism, independent judgment and the overall ability to work with all levels within City government.

Although the incumbent may manage a variety of specialized operations, primary emphasis is upon the formulation and execution of broad policies rather than upon immediate technical supervision and participation in the detailed activities in the assigned operations. This data and recommendations, which are prepared by the City Manager, are essential to the policy and administrative decisions made by the Mayor and City Council

Work performed is subject to general executive direction of the Mayor/ City Council.

ILLUSTRATIVE EXAMPLES OF ESSENTIAL FUNCTIONS

Provides supervision, direction and coordination for programs and activities of the Police Department and assigned departments to include direct supervision of Emergency Operations Division (EOC), and (COBRA team), and (ARSON and EXPLOSIVES DETECTION and DISPOSAL TEAM)

Supervises the planning, organization and direction of budget preparation and in presentation to the City Council and implementation after adoption, as needed.

Prepares and reviews work plans and project cost estimates; devices and administers; cost controls.

Presents and interprets City Programs to the City Council.

Confers with City officials, federal, state and local representatives on problems affecting the City's policies and controls.

ADDITIONAL JOB FUNCTIONS

Serves as a member of various committees, boards, or organizations representing the City. Performs other work as may be assigned to obtain organizational goals.

From the foregoing, it appears that the positions of Interim City Manager and Director of Public Safety have been combined into one position by the City of Columbia. We have consistently advised "that the mere assignment of additional duties to an already-existing office would not create a second office." Op. S.C. Atty. Gen., November 10, 1988. In that opinion, we quoted 63A Am.Jur.2d, Public Officers and Employees, § 70 as follows:

[a] prohibition against the holding by one person of two or more offices at the same time is not violated by the holding of a single office ... which has been clothed with added powers or burdened with additional duties, even though such powers and duties have been withdrawn from another office

S.C. Code Ann. Section 5-13-90(5) provides that the city manager is to "[p]erform such other duties as may be prescribed by law or required of him by the municipal council, not inconsistent with the provisions of Chapters 1 through 17." It is evident that here the City of Columbia has assigned the additional duties of director of public safety to the Interim City Manager. Such assignment "is not really one of dual office holding," Op. S.C. Atty. Gen., June 2, 2000, but instead is one of defining the role of Interim City Manager for the City of Columbia.

Neither is the fact that the individual in question may continue to perform duties as a police officer controlling. The Job Description states that "[t]he Incumbent areas of responsibility are to include all Public Safety functions for the City" Thus, included within the assignment of

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additional duties to the Interim City Manager are not only the duties as Director of Public Safety but those of a police officer for the City as well. Thus, there is no dual office holding here.

Conclusion

It is our opinion that the position of Interim City Manager / Director of Public Safety for the City of Columbia does not create a dual office holding situation under the South Carolina Constitution.

Very truly yours,

A handwritten signature in black ink, appearing to read 'RDC', is written over the closing 'yours,'.

Robert D. Cook
Assistant Deputy Attorney General

RDC/an