

7735 Liberty



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

April 20, 2004

The Honorable Maggie W. Glover
Senator, District 30
Post Office Box 142
Columbia, South Carolina 29202

Dear Senator Glover:

Thank you for your recent request for advisory opinion from this Office concerning dual office holding. You have inquired whether a Deputy County Administrator can run for the state Senate seat without violating the constitutional provisions on dual office holding. You have also asked for the "particulars of the Hatch Act."

Law/Analysis

Article XVII, Section 1A of the South Carolina Constitution provides that "no person may hold two offices of honor or profit at the same time ..." with exceptions specified for an officer in the militia, member of a lawfully and regularly organized fire department, constable, or notary public. For this provision to be contravened, a person concurrently must hold two 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 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). Furthermore, "[O]ne who merely performs the duties required of him under an express contract or otherwise, though such persons themselves be public officers, and though the employment be in or about a public work or business, is a mere employee." Sanders, supra, 78 S.C. at 174.

It is beyond dispute that a state Senator is a state office holder for purposes of dual office holding. See Ops. S.C. Atty. Gen. dated February 5, 1988, May 2, 1989; June 5, 1979; May 14, 1986. The dispositive question then becomes whether a Deputy County Administrator is an officer for dual office holding purposes.

This Office has consistently held that the County Administrator in a council-administrator government is an office holder for dual office holding purposes. See, e.g., Ops. S.C. Atty. Gen., June 10, 2003; May 7, 1998; August 8, 1990; May 30, 1979.

The issue of whether a deputy county administrator holds an office is, however, less clear. The position of deputy county administrator is not created by state statute, nor is it apparently subject

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to an oath. Compare, Op. S.C. Atty. Gen., January 22, 2001 (position of deputy coroner is an "office" for dual office holding purposes; although unpaid, "the position of deputy coroner is authorized by state statute and an oath of office is taken.") As we understand it, the position of Deputy County Administrator, as a general matter, "merely performs the duties required of him" by either the County Administrator or the county council. See, Sanders v. Belue, supra. Moreover, in a similar context, we have previously concluded that a deputy county auditor does not hold an office for dual office holding purposes. See, Op S.C. Atty. Gen., June 21, 1993 [unlike the position of deputy county auditor, "the positions of deputy coroner and deputy clerk of court are established by statute, require an oath of office and statutory authority sets forth the specific duties."].

Based upon the foregoing, it is likely that a deputy county administrator does not hold an office for dual office holding purposes. However, in an opinion, dated May 13, 1997, we noted that


[S]ome county employees are considered public officers . . . [a] determination of whether a county employee is a public officer for dual office holding purposes is most effectively accomplished by providing this Office with a job description of the employee.

Also see Op. S.C. Atty Gen., dated September 12, 1996 (Barnwell County Administrator is an office holder, after a review of the job description in the ordinance). In short, the question of whether a Deputy County Administrator for any particular county is an office holder would be a fact specific determination that can be made only after a review of the county ordinance which creates the position and the position's particular job description. Accordingly, this Office advises that as a general matter, a deputy county administrator is in all likelihood not an office holder for dual office holding purposes; however, we cannot conclusively give an opinion as to whether the particular Deputy County Administrator to whom you refer in your request is an office holder, without further information.

Another concern that you have raised is the applicability of the Hatch Act. The Hatch Act is a federal statute that prohibits certain partisan political activities of public employees whose positions are somehow tied to federal funds. It is unlikely that this provision would be relevant to the situation that you have inquired about, unless the compensation for the Deputy County Administrator can be substantially tied to federal funding. We would advise that you contact the Office of the Special Counsel of the United States Merit Systems Protection Board, which gives advice on applicability of the Hatch Act, to obtain a more conclusive answer as to the relevancy of the Hatch Act to your situation. That agency may be contacted by calling toll-free 1-800-85-HATCH (42824).

Please do not hesitate to contact me if you have any further questions.

Very truly yours,



Robert D. Cook

Assistant Deputy Attorney General

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