

1967 Adams



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

February 5, 2004

The Honorable Richard M. Harvey
Colleton County Coroner
Post Office Box 2264
Walterboro, South Carolina 29488

Dear Coroner Harvey:

In a letter to this office you indicated that you are currently the coroner for Colleton County and have been asked to consider the position of Colleton County EMS director. You have asked whether you, as an elected official, can accept the EMS director position as well.

Article XVII, Section 1A of the State 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, a 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).

This office has indicated on numerous occasions that the position of coroner or deputy coroner are offices for dual office holdings purposes of the State Constitution. See: Ops. Atty. Gen. dated October 16, 2000; October 23, 1991; February 10, 1984. You did not provide a job description or comment specifically on the responsibilities and duties of the position of EMS director. However, other opinions of this office have concluded that a county EMS director would not be considered an office for dual office holding purposes. See: Ops. Atty. Gen. dated October 16, 2000; April 20, 1987. The April 20, 1987 opinion noted that the EMS director referenced in that opinion received a salary but was not required to take an oath and did not appear to exercise the sovereign power of the State. Based upon such a similar understanding as to the position of EMS director in your situation and consistent with the previously referenced opinions, it is our opinion that there would not be any dual office holding considerations if you as coroner accepted the additional position as County EMS director.

The April 20, 1987 opinion did point out one area of potential conflict if both positions of coroner and County EMS director were held by the same individual. The question was raised as to

Received

The Honorable Richard M. Harvey
Page 2
February 5, 2004

a possible problem that could emerge if the county coroner should be required to investigate a death where the EMS was involved in trying to revive an individual. That opinion noted such "complicating factor" and "cause for concern"

...since the coroner as director of the...(county)...EMS potentially could be placed in the position of having to justify his own actions or those of an employee whom he supervises in the course of his investigating the cause of death in a particular case. If the coroner should be so employed and such a situation should arise, it should be noted that a duly-appointed deputy coroner would be authorized to hold an inquest.

Consistent with the above, it is our opinion that there is no absolute prohibition for you as coroner to assume the position as County EMS director. However, as noted above, certain situations may present themselves which could be possibly construed as a conflict of interest. As a result, consideration must be given to accommodating those potential conflicts of interest if they present themselves.

Sincerely,



Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Assistant Deputy Attorney General