



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

July 9, 2004

R. Allen Young, Esquire
Town Attorney
Town of Mount Pleasant
Post Office Box 745
Mount Pleasant, South Carolina 29465

Dear Mr. Young:

You have requested an opinion from this Office concerning dual office holding. You ask whether a Town Administrator in Charleston County can also be appointed as a member of the Charleston County Election Commission, also known as the Board of Elections and Voter Registration, without violating the constitutional provisions on dual office holding. You have indicated that the administrator position in question is not a sworn position, but in your view acts as the agent of sworn office holders, the Mayor and town council members.

Law/Analysis

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, 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).

We have advised on two occasions that a member of the Charleston County Election Commission would hold an office for dual office holding purposes. Ops. S.C. Atty. Gen. dated May 20, 1986 and March 12, 1984. Moreover, we have consistently concluded that other members of various election commissions and voter registration boards throughout the state are office holders. See, Ops. S.C. Atty. Gen. dated May 27, 2003 (Georgetown County Election Commission); February 23, 1995 (City of Bishopville Election Commission); September 12, 1990 (Florence County Election Commission); and July 24, 1980 (City of Greenville Election Commission) as representative of those opinions concluding that county election commission members would be office holders; and see Ops. S.C. Atty. Gen., May 6, 1992; June 19, 1987; and July 11, 1984 as

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representative of those opinions concluding that one who would serve on a voter registration board would be an office holder. See also, Op. S.C. Atty. Gen., March 23, 1995, concluding that members of the Union County Board of Election and Registration Board holds an office for dual office holding purposes. Accordingly, it is our opinion that a member of the Charleston County Election Commission would hold an office for dual office holding purposes. The question therefore turns to whether the position of Town Administrator would likewise be considered an office.

You have advised that the town administrator in question is hired by and carries out the duties of a Mayor and Town Council. Based upon this information, we presume that the municipality in question operates under the "mayor-council" form of government, pursuant to S.C. Code Ann. § 5-9-10 et seq. Section 5-9-40 provides: "The mayor and council may employ an administrator to assist the mayor in his office." (emphasis added). No statute of which we are aware establishes qualifications to be met or duties to be exercised by such an administrator. You have indicated that the administrator in question does not take an oath of office, and serves at the pleasure of the Mayor and Town Council. Moreover, § 5-9-40 itself uses the term "employ." We advised in an opinion dated October 13, 1992 that the administrator for the Town of Andrews, also a position created under the authority of Section 5-9-40, was not an office holder, as most of the factors usually found in an office were lacking. Similarly, this Office has advised on a number of occasions that town administrators in the "council" form of municipal government, created pursuant to Section 5-11-40, are not officers for dual office holding purposes. Ops. S.C. Atty. Gen. dated August 15, 2000 (City of Johnsonville); May 24, 2000 (City of Westminster); October 18, 1988 (Town of Lexington).

Based on the reasoning of these earlier opinions, we are of the opinion that the town administrator position of which you have inquired is likely one of employment rather than an office. Accordingly, it is our advice that the town administrator in question may be appointed to the Charleston County Election Commission without violating the constitutional prohibition on dual office holding.

Very truly yours,



Robert D. Cook
Assistant Deputy Attorney General