



The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER  
ATTORNEY GENERAL

May 6, 2005

The Honorable Robert L. Brown  
Member, House of Representatives  
P.O. Box 11867  
Columbia, South Carolina 29211

Dear Representative Brown:

In your letter of March 30, 2005, you inquired as to whether it would be a violation of the dual office holding prohibition to serve simultaneously as Mayor and Planning and Zoning Administrator for the Town of Hollywood. You attached therein the city ordinance which establishes the position of Planning and Zoning Administrator and explains accompanying duties. The town ordinance states that the Zoning Administrator "shall be appointed by the Mayor, subject to Council approval." Furthermore, the Administrator's duties include: administering the ordinance, granting all required permits and certificates, and making direct inspections of buildings as necessary to carry out the enforcement of the ordinance. Following review of this inquiry, we advise that it would constitute dual office holding to serve simultaneously as Mayor and Planning and Zoning Administrator for the Town of Hollywood. Moreover, such concurrent service would contravene S.C. Code Ann. Section 5-7-180.

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. In order 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.

We have advised on numerous occasions that the position of mayor is an office for purposes of dual office holding. See, *Op. S.C. Atty. Gen.*, September 21, 1989 and opinions cited therein.

Furthermore, this Office has previously advised that a member of a county or municipal planning and zoning commission, and specifically a member of the Town of Hollywood Planning and Zoning Commission, holds an office for purposes of dual office holding. See, *Op. S.C. Atty. Gen.*, July 8, 2003 (Hollywood Planning and Zoning Commission); October 16, 1995 (Gaffney Zoning and Planning Commission); August 24, 1992 and April 5, 1990 (Florence Planning Commission); April 24, 1979 (Anderson Planning and Zoning Commission). However, we have apparently not addressed the specific question of whether the Planning and Zoning Administrator for the Town of Hollywood is an office for purposes of dual office holding.

Many years ago, we advised that a Zoning Administrator is not an office for purposes of dual office holding. See, *Op. S. C. Atty. Gen.*, October 26, 1972. However, more recently, we have advised that the Zoning Administrator for Mt. Pleasant is an office for purposes of dual office holding. See, *Op. S.C. Atty. Gen.*, April 2, 2002. In that Opinion, found it significant that the position included the power to 'administer and enforce' the provisions of the ordinance. Furthermore, we noted that the Administrator's duties in Mt. Pleasant included that of a zoning enforcement officer (empowered to administer and enforce the provisions of the ordinance with respect to subdivision regulation, zoning code and municipal impact fees).

Section 5-5-18 of the Hollywood Municipal Code similarly empowers the Mayor to appoint the Zoning Administrator, "subject to council approval." Pursuant to § 5-5-19, the powers of the Zoning Administrator are specified as follows:

[t]he Zoning Administrator shall have the power to grant all required permits and certificates and to make or direct inspections of buildings or premises necessary to carry out his duties in the enforcement of this [zoning] ordinance. Appeals from a decision of the Zoning Administrator, or other official of the Town, or appeal to request variance from the strict terms of this ordinance, shall be filed as specified in this ordinance.

Moreover, it appears that the position of "zoning administrator" is referenced in state statutes, with considerable discretion attached to the position. For example, § 6-29-950, which is part of the South Carolina Local Government Comprehensive Planning Enabling Act of 1994, provides as follows:

(A) [t]he governing authorities of municipalities or counties may provide for the enforcement of any ordinance adopted pursuant to the provisions of this chapter by means of the withholding of building or zoning permits, or both, and the issuance of stop orders against any work undertaken by an entity not having a proper building or zoning permit, or both. It is unlawful to construct, reconstruct, alter, demolish, change the use of or occupy any land, building, or other structure without first obtaining the appropriate permit or permit approval. No permit may be issued or approved unless the requirements of this chapter or any ordinance adopted pursuant

to it are complied with. *It is unlawful for other officials to issue any permit for the use of any land, building, or structure, or the construction, conversion, demolition, enlargement, movement, or structural alteration of a building or structure without the approval of the zoning administrator. A violation of any ordinance adopted pursuant to the provisions of this chapter is a misdemeanor. In case a building, structure, or land is or is proposed to be used in violation of any ordinance adopted pursuant to this chapter, the zoning administrator or other appropriate administrative officer, municipal or county attorney, or other appropriate authority of the municipality or county or an adjacent or neighboring property owner who would be specially damaged by the violation may in addition to other remedies, institute injunction, mandamus, or other appropriate action or proceeding to prevent the unlawful erection, construction, reconstruction, alteration, conversion, maintenance, or use, or to correct or abate the violation, or to prevent the occupancy of the building, structure, or land. Each day the unlawful erection, construction, reconstruction, alteration, conversion, maintenance, or use continues is considered a separate offense.*

(emphasis added).

Based upon the foregoing powers and duties of the Hollywood "zoning administrator," which are not unlike those addressed in the April 2, 2002 opinion concerning the Mt. Pleasant Zoning Administrator, it is our opinion that this position constitutes an office for dual office holding purposes. It is apparent that the discretion to "grant permits and certificates" and the duty to enforce the zoning ordinance of the Town carries with it the exercise of sovereign powers of the State. Thus, to serve simultaneously as mayor of Hollywood and zoning administrator for the Town would likely constitute dual office holding under the South Carolina Constitution.

Moreover, § 5-7-180 of the Code provides that "[e]xcept where authorized by law, no mayor or councilman shall hold any other municipal office *or municipal employment* while serving the term for which he was elected." Thus, even if the position of zoning administrator were not an office for purposes of Art. XVII, § 1A, § 5-7-180 would proscribe the mayor's holding such position.

We would note also that based upon the context of your question regarding dual office holding, it would be a conflict of interest for the mayor to appoint himself as zoning administrator for the Town. As noted above, the mayor makes the appointment of zoning administrator "subject to council approval." It is well recognized in South Carolina law that in the absence of a constitutional or statutory provision, it is "contrary to public policy to permit an officer having an appointing power to use such power "as a means of conferring an office upon himself, or to permit a body to appoint one of its own members." *Bradley v. City Council of Greenville*, 212 S.C. 389, 46 S.E.2d 291 (1948). Accordingly, in addition to the proscription contained in the State Constitution on dual office holding, as well as the prohibition found in § 5-7-180, the public policy of South Carolina would preclude the mayor from appointing himself as Town zoning administrator.

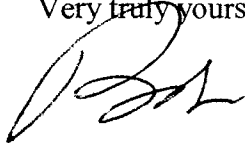
The Honorable Robert L. Brown  
Page 4  
May 6, 2005

**Conclusion**

To summarize the above, we would advise that

1. to serve concurrently as mayor and zoning administrator of the Town of Hollywood would contravene the prohibition against dual office holding specified in Art. XVII, § 1A of the South Carolina Constitution.
2. To serve concurrently as mayor and zoning administrator of the Town of Hollywood is also prohibited by § 5-7-180 which proscribes a mayor or member of Town Council, from holding any other municipal office or municipal employment.
3. Moreover, South Carolina public policy prohibits the appointment of one's self to another office or position. Thus, the mayor of Hollywood, who is empowered to appoint the zoning administrator, could not appoint himself to such position.

Very truly yours,



Robert D. Cook  
Assistant Deputy Attorney General