

8023 Liberty



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

September 6, 2005

The Honorable Edward Moyd
City Councilman, City of Hardeeville
Post Office Box 1055
Hardeeville, South Carolina 29927

Dear Mr. Moyd:

By letter, you request our opinion regarding dual office holding and conflict of interest. Specifically, you ask whether it would violate the dual office holding provision of the South Carolina Constitution to serve simultaneously as a City Councilman for the City of Hardeeville and the Jasper County Planning and Zoning Coordinator. Following review of this inquiry, we advise that both of the aforementioned positions are office for purposes of dual office holding. Accordingly, it is our opinion that simultaneous service as a City Councilman for the City of Hardeeville and the Jasper County Planning and Zoning Coordinator would violate the dual office holding provision.

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.

We have advised on numerous occasions that a member of a city or town council would be considered an officer for dual office holding purposes. See, as representative, *Ops. S.C. Atty. Gen.*, July 19, 2001; April 12, 1998; June 12, 1995, February 4, 1994; July 23, 1993. Therefore, the

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question turns upon whether the position of Jasper County Planning and Zoning Coordinator would likewise be considered an office.

We have opined that a member of a county or municipal planning and zoning commission holds an office for purposes of dual office holding. *See, Ops. 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). Furthermore, it has also been our opinion that a Planning and Zoning Administrator is an office holder for purposes of dual office holding. *See, Ops. S.C. Atty. Gen.*, May 6, 2005 (Town of Hollywood Planning and Zoning Administrator office holder); April 2, 2002 (Mt. Pleasant Zoning Administrator office holder). In the April 2, 2002 opinion, we 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 the function 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). However, we have not as yet addressed the specific question of whether the Jasper County Planning and Zoning Coordinator holds an office for purposes of dual office holding.

You have described the position of Jasper County Planning and Zoning Coordinator in your letter as including the following duties:

[a]dministers the County's zoning ordinance that regulated the use and development of land within County units [sic], to supervise the enforcement of all provisions of the zoning ordinance, to issue appropriate permits and certificates for all construction or change in use of land, and to perform related professional, administrative and supervisory work as required. Works with broad policy and organizational guidelines and does independent planning and implementation. Reporting progress of major activities through periodic conferences and meetings. Works closely with Planning and Building Department personnel and assists Director of Planning and Building Services.

Beginning salary \$40,854. Salary based on experience and qualifications

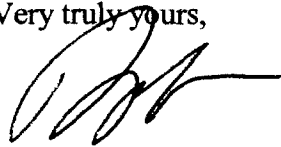
The foregoing description of the duties of the Planning and Zoning Coordinator closely resembles the duties of the above-described zoning and planning administrator position. As noted, we have concluded that such position of Zoning Administrator constitutes an office. Accordingly, we advise that the described duties of the Planning and Zoning Coordinator appear to constitute the exercise of sovereignty which would make the position an office for dual office holding purposes.

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Conclusion

It is our opinion that an individual who simultaneously serves as a member of the Hardeeville City Council and as the Jasper County Planning and Zoning Coordinator would violate the dual office holding prohibition.

Very truly yours,

A handwritten signature in black ink, appearing to read 'R. D. Cook', with a long horizontal flourish extending to the right.

Robert D. Cook
Assistant Deputy Attorney General