

August 28, 2007

Jeff M. Anderson, Esquire
Lexington County Attorney
Post Office Box 489
Lexington, South Carolina 29071-0489

Dear Mr. Anderson:

In a letter to this office you questioned whether the individual designated as the Chief Deputy Clerk of Court in Lexington County holds an office for dual office holding purposes. You indicated that in addition to the individual designated as Chief Deputy Clerk of Court, several other individuals are designated as Deputy Clerks of Court. As to these individuals you state,

...all the Deputy Clerks of Court, including the Chief Deputy Clerk of Court, are simply given that title by the Clerk of Court and do not meet the statutory definition of Deputy Clerk of Court as set forth in S.C. Code § 14-17-60. Specifically, the Chief Deputy Clerk of Court has not been approved by the Court of Common Pleas and has not taken an oath of office. Additionally, there is no security bond issue for the Chief Deputy Clerk of Court other than the blanket bond for all Clerk of Court employees.

You state that “[t]he question appears to be whether the Chief Deputy Clerk of Court is a ‘statutory deputy’ as set forth in S.C. Code § 14-17-60 or whether she is an employee of the County that has simply been given the designation of Chief Deputy Clerk of Court.”

According to the job description which you forwarded along with your letter, included in the duties assigned to the Chief Deputy Clerk of Court is the responsibility of “performing function of ‘Clerk of Court’ in his absence”. Such description also states that in addition to general office administrative duties, the Chief Deputy Clerk of Court has the responsibility to “...work courtrooms such as swear witnesses, secure evidence, process pleas, etc.”

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, a member of a lawfully and regularly organized fire department, a constable, or a notary

Mr. Anderson
Page 2
August 28, 2007

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).

Prior opinions of this office have concluded that a clerk of court is an officer for dual office holding purposes. See, e.g., Ops. Atty. Gen. dated March 3, 1993 and September 5, 1973. Similarly, this office has concluded that deputy clerks of court hold an office for dual office holding purposes. See, e.g., Ops. Atty. Gen. dated April 20, 2004; June 21, 1993; December 29, 1981. The June 21, 1993 opinion referenced that, generally, as to deputy clerks of court, "...individuals in those deputy positions perform all the duties pertaining to that office, that there was no justification for differentiation and that the deputies were public office holders." The opinion further noted that the position of deputy clerk of court was established by statute, required an oath of office and statutory authority set forth the specific duties of that position. With reference to such statutory duties, S.C. Code Ann. § 14-17-60 states that a clerk of court

...may appoint a deputy or deputies to be approved by the court of common pleas, a record of whose appointment shall be made in the clerk's office. Before entering on the duties of his appointment such deputy must take the oath prescribed by the Constitution. When so qualified the deputy may do and perform any and all of the duties appertaining to the office of his principal. Such appointment shall be evidenced by a certificate thereof, signed by the clerk, and shall continue during his pleasure. He may take such bond and security from his deputy as he shall deem necessary to secure the faithful discharge of the duties of the appointment but shall in all cases be answerable for the neglect of duty or misconduct in office of his deputy.

As set forth above, in your letter you stated that the Chief Deputy Clerk of Court is simply given that title by the Clerk of Court and does not meet the statutory definition of Deputy Clerk of Court as set forth by Section 14-17-60. You referenced that the Chief Deputy Clerk of Court is not approved by the Court of Common Pleas and has not taken the oath of office. Additionally, there is no security bond issue for the Chief Deputy Clerk of Court other than the blanket bond for all Clerk of Court employees. However, in the opinion of this office, regardless of the failure to comply with the requirements of Section 14-17-60, the individual designated as Chief Deputy Clerk of Court should nevertheless be considered as holding an office for dual office holding purposes. As stated above, without question, a clerk of court is an officer for dual office holding purposes. In light of the fact that in the situation addressed by you, the Chief Deputy Clerk of Court is authorized to function as the Clerk of Court, similarly, the Chief Deputy Clerk of Court holds an office for dual office holding purposes. As set forth above, the duties performed by that individual in that capacity include "performing function of 'Clerk of Court' in his absence" which include duties of swearing witnesses, securing evidence and processing pleas. In the opinion of this office, in performing as

Mr. Anderson
Page 3
August 28, 2007

Clerk of Court, the Chief Deputy Clerk of Court performs duties involving an exercise of some portion of the sovereign power of the State. Additionally, Section 14-17-60 establishes the statutory position of deputy clerk of court and prescribes its duties. Failing to comply with the statutory requirements for the position of Chief Deputy Clerk of Court does not, in the opinion of this office, prevent the individual holding such position from being considered as holding an office for dual office holding purposes.

If there are any questions, please advise.

Sincerely,

Henry McMaster
Attorney General

By: Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Assistant Deputy Attorney General