



HENRY McMASTER
ATTORNEY GENERAL

August 10, 2009

Zachary D. Ellis, Assistant Solicitor
Seventh Judicial Circuit
Spartanburg County Court House
180 Magnolia Street
Spartanburg, South Carolina 29306

Dear Mr. Ellis:

In a letter to this office you indicated that you presently serve as an assistant solicitor in the Seventh Circuit Solicitor's office and are questioning whether you may also serve as a part-time city prosecutor.

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 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 in prior opinions has indicated that the position of assistant solicitor would be considered an office for dual office holding purposes. See: Ops. Atty. Gen. dated May 17, 2006; February 8, 2005; May 30, 1997; March 27, 1995. This office has also concluded that the position of city prosecutor is an office for dual office holding purposes. See: Ops. Atty. Gen. dated June 27, 1997; May 29, 1986; May 3, 1982.

Consistent with the above, in the opinion of this office, an individual simultaneously serving as an assistant solicitor and a part-time city prosecutor would most probably hold dual offices in conflict with the referenced provisions of the State Constitution.

Mr. Ellis
Page 2
August 10, 2009

With kind regards, I am,

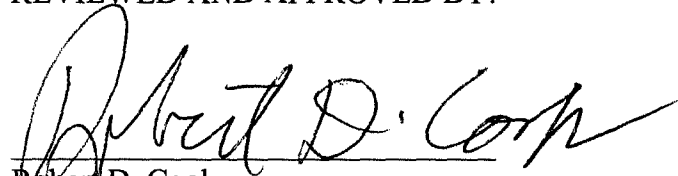
Very truly yours,

Henry McMaster
Attorney General



By: Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General