



HENRY McMASTER  
ATTORNEY GENERAL

March 24, 2010

The Honorable Jerry N. Govan, Jr.  
Member, House of Representatives  
404-B Blatt Building  
Columbia, South Carolina 29211

Dear Representative Govan:

We received your letter requesting an opinion of this Office concerning dual office holding. You asked whether there is "any state statute that prohibits an individual from filing and running for a house seat and constitutional office at the same time." Several prior opinions of this Office have addressed the question of dual-office holding and dual candidacy. This opinion will address those prior opinions and explore the circumstance of an individual running for two offices simultaneously.

### **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, but any person holding another office may at the same time be an officer in the militia, member of a lawfully and regularly organized fire department, constable, or a notary public." For this provision to be contravened, a person concurrently must hold two public 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). "One who is charged by law with duties involving an exercise of some part of the sovereign power, either small or great, in the performance of which the public is concerned, and which are continuing, and not occasional or intermittent, is a public officer." Id., 58 S.E. 762, 763. Other relevant considerations are whether statutes, or other such authority, establish the position, prescribe its tenure, 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).

On numerous occasions, we have opined the following:

The prohibition on dual office holding is only contravened when an individual who holds an office assumes a second office. Merely running for an office does not violate the dual office

holding prohibition. The problem would arise if the individual holding the first office were elected, took the oath, and began to exercise the duties of the second office.

See, Ops. S.C. Atty. Gen., August 13, 2009; March 7, 2008; September 8, 1992.

In the circumstances before us, the individual currently does not hold any office. Hence, running simultaneously for two offices – member of the house of Representatives and a constitutional office – is not problematic. However, if the individual is elected to both, there would be a conflict.

In many prior opinions, this Office has explained that a member of the South Carolina House of Representatives holds an office for purposes of dual office holding. See, e.g., Ops. S.C. Atty. Gen., July 24, 2009; September 20, 2002; February 9, 2001; June 11, 1992. A “constitutional office” by definition is also an office for purposes of dual office holding because duties involve exercising some sovereign power of the State. See, e.g., Ops. S.C. Atty. Gen., May 11, 1972. Since the request for this opinion is not clear as to the nature of the “constitutional office,” we caution that the person considering running for office should familiarize himself with any applicable agency rules, office restrictions or ethical considerations.

In an opinion of this Office dated April 22, 1982, we addressed the issue of dual candidacy:

There is no state statute that would prevent a person from being a candidate for two offices.

See, e.g., Ops. S.C. Atty. Gen., March 11, 1977; September 7, 1966; September 20, 1996.

### Conclusion

Running for an office and holding an office are two distinct situations and are treated differently under the law. Thus, one may **file and run** for both the house seat and the constitutional office without violating a state statute or constitutional provision. However, with certain exceptions,<sup>1</sup> the

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<sup>1</sup>S.C. Const. Art. XVII, § 1A. (No person may hold two offices of honor or profit at the same time, but any person holding another office may at the same time be an officer in the militia, member of the fire department, constable, or notary public.); S.C. Const. Art. VI, § 3 (“This limitation does not apply to officers in the militia, notaries public, members of lawfully and regularly organized fire departments, constables, or delegates to a constitutional convention.”) S.C. Const. Art. III, § 24 (“No person is eligible to a seat in the General Assembly while he holds any office or position of profit or trust under this State, the United States of America, or any of them, or under any other power, except officers in the militia, members of lawfully and regularly organized fire departments, (continued...)”)

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South Carolina Constitution is clear that no one may **hold** multiple offices of honor or profit at the same time.

Sincerely,

Henry McMaster  
Attorney General



By: Leigha Blackwell  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Deputy Attorney General

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<sup>1</sup>(...continued)  
constables, and notaries public. If any member accepts or exercises any of the disqualifying offices or positions he shall vacate his seat.”)