

January 18, 2008

Mr. James E. Moultrie
134 Grove Street
Dillon, South Carolina 29536

Dear Mr. Moultrie:

In a letter to this office you indicated that you are presently serving as chairman of the Dillon County Democratic Party. You indicated that you are interested in running for a vacant seat on the Dillon County Council. You have questioned the legality of your holding both positions.

Article XVII, section 1A of the South Carolina Constitution (Supp. 2006) prohibits a person from holding “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.” To contravene this provision, a person concurrently must hold two offices having duties that involve the exercise of some portion of the sovereign power of the State. Sanders v. Belue, 78 S.C. 171, 174, S.E. 762, 763 (1907). Furthermore, our courts recognize other relevant considerations in determining whether an individual holds an office, such as, whether a statute, or other such authority, establishes the position, proscribes the position's duties or salary, or requires qualifications or an oath for the position. State v. Crenshaw, 274 S.C. 475, 477, 266 S.E.2d 61, 62 (1980).

This office has concluded on numerous occasions that a position on a county council is an office for dual office holding purposes. See: Ops. Atty. Gen. dated October 22, 2007; January 18, 2006; and November 2, 2005. This office has also consistently advised that an officer of a local political party does not hold an office for dual office holding purposes. See: Ops. Atty. Gen. dated December 15, 2003; July 29, 1986; March 23, 1982. Accordingly, in the opinion of this office an elected officer of a county political party could serve simultaneously on the county council without violating the dual office holding prohibition of the State Constitution.

Mr. Moultrie
Page 2
January 18, 2008

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
Assistant Deputy Attorney General