

July 30, 2007

The Honorable P. J. Tanner
Sheriff, Beaufort County
Post Office Box 1758
Beaufort, South Carolina 2991011

Dear Sheriff Tanner:

In a letter to this office you indicated that an individual in Beaufort County holds the positions of both deputy sheriff and deputy treasurer. You have questioned whether such simultaneous holding of both positions contravenes the dual office holding provisions of the State Constitution.

Article XVII, section 1A of the South Carolina Constitution provides that “[n]o 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.” In order 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 previously that a deputy sheriff would be considered an office holder for dual office holding purposes. See: Ops. Atty. Gen. dated March 3, 2004; July 13, 1995; June 11, 1992; January 8, 1986; September 24, 1982. With regard to the position of deputy treasurer, this office has concluded that the office of county treasurer does constitute an office for dual office holding purposes. See: Ops. Atty. Gen. dated September 12, 1996 and January 22, 1993.

As to the position of deputy treasurer, S.C. Code Ann. § 12-45-35 states that

(A) [a] county treasurer may appoint an employee in his office to be his deputy. The appointment must be filed with the department and the governing body of that county. When the appointment is filed, the deputy may act for and on behalf of the county treasurer when the treasurer is incapacitated by reason of a physical or mental disability or during a temporary absence.

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(B) If there is a vacancy in the office of county treasurer by reason of death, resignation, or disqualification, the appointed deputy shall carry out the duties of the office until a successor is appointed or elected and qualified.

As noted in an opinion of this office dated March 18, 1983, it is generally recognized that

[a] deputy is one who, by appointment, exercises his office in another's right, doing all things in the principal's name and is one empowered to act for the principal, doing anything the principal may do in all matters in which the principal may act.

Another opinion dated December 21, 1981 stated that "[g]enerally, deputies are considered as agents of a principal with the acts of such agents being considered as acts of the principal for which the latter is responsible." I would note that the position of Beaufort County Deputy Treasurer was recognized by the State Supreme Court in its decision in Hawkins v. Bruno Yacht Sales, Inc., 353 S.C. 31, 577 S.E.2d 202 (2003). This office in an opinion dated June 21, 1993 referenced other prior opinions that concluded that deputy coroners and deputy clerks of court were public office holders. That opinion referenced that the positions of deputy coroner and deputy clerk of court are established by statute and that statutory authority sets forth specific duties for such positions. Consistent with the foregoing, in the opinion of this office, a deputy treasurer would also be considered an office holder for dual office holding purposes.

As to your particular question, consistent with the above, an individual who serves both as deputy sheriff and as a deputy treasurer would most probably contravene the dual office holding provisions of the State Constitution.

Sincerely,

Henry McMaster
Attorney General

By: Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Assistant Deputy Attorney General