



ALAN WILSON
ATTORNEY GENERAL

January 14, 2011

Mr. R. Allen Young
Town Attorney
Town of Mount Pleasant
100 Ann Edwards Lane
Post Office Box 745
Mount Pleasant, South Carolina 29465

Dear Mr. Young:

We received your letter requesting an opinion of this Office concerning whether a city council member may simultaneously serve as a reserve deputy sheriff.

Law/Analysis

As your letter points out, 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, member of a lawfully and regularly organized fire department, constable, or 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 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), cert. denied, 449 U.S. 883 (1980). Furthermore, “one who merely performs the duties required of him by persons employing him under an express contract or otherwise, though such persons themselves be public officers, and though the employment be in or about a public work or business, is a mere employee.” Sanders, 78 S.C. at 174, 58 S.E. at 763.

As you acknowledged in your letter, this Office has advised on numerous occasions that a member of a city or town council is considered an officer for dual office holding purposes. Accordingly, you inquired specifically as to whether a reserve deputy sheriff with the Charleston County Sheriff's Department would likewise be considered an office holder. This Office has also concluded on several occasions that one who serves as a reserve police officer holds an office within the meaning of Article XVII, Section 1A of the South Carolina Constitution. See Ops. S.C. Att'y Gen. dated

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June 5, 1979; September 12, 1980; February 5, 1988; August 12, 1991; Apr. 14, 1993; July 13, 1995 (“simultaneous service as a member of county council and as a reserve officer would probably run afoul of the dual office holding provisions”). Moreover, this Office has specifically concluded that “a reserve officer may not simultaneously serve as a city councilman without violating the dual office holding prohibition.” Op. S.C. Att’y Gen. (March 21, 2005).

Conclusion

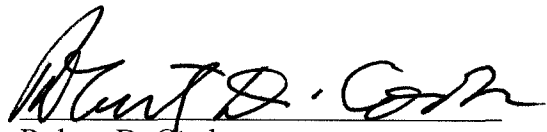
This Office reaffirms its prior opinions and concludes that it would be a violation of the dual office holding prohibition for a member of the Mount Pleasant Town Council to simultaneously serve as a Reserve Deputy Sheriff.

Sincerely,



ElizabethAnn L. Felder
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General