



ALAN WILSON  
ATTORNEY GENERAL

March 23, 2011

Ms. Sharon Hammond  
Director, Bamberg County Emergency Services  
P.O. Box 119  
2893 Main Hwy.  
Bamberg, SC 29003

Dear Director Hammond:

We received your letter requesting an opinion of this Office concerning dual office holding. Specifically, your letter states that you currently serve as the Bamberg County Emergency Services Director. You are running for the Commissioner for the City of Bamberg Board of Public Works and request an opinion as to whether simultaneously serving in both positions would violate the prohibition of dual office holding in the South Carolina Constitution.

Article XVII, Section 1A of the South Carolina Constitution (Supp. 2007) 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 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, 58 S.E. 762 (1907). Further, our courts recognize other relevant considerations such as whether a statute, or other such authority, establishes the position, proscribes the position's tenure, 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).

First, "[t]his Office has consistently concluded that the position of commissioner of public works authorized by § 5-31-210 et seq. is an office for dual office holding purposes." (Op. S.C. Att'y Gen. (March 13, 2003)) (citing Ops. S.C. Att'y Gen. dated July 19, 1995; April 12, 1993; September 24, 1990; May 2, 1974). Thus, the issue is whether the position of Emergency Preparedness Director would be an office for purposes of the dual office holding prohibition of the South Carolina Constitution.

This Office advised in a prior opinion that it appeared that the position of Emergency Preparedness Director of the County of Edgefield, even when paired with duties of co-coordinator of the E911 system, would be a position of employment rather than an office. Op. S.C. Att'y Gen. (June 24, 1996); see also Op. S.C. Att'y Gen. (September 29, 2006) (assistant director of Union County Emergency Preparedness Division is employee rather than office). As was the case with the job description of the Edgefield Director, the job description you forwarded us reflects that no statute or ordinance seems to have created


Director Hammond  
Page 2  
March 23, 2011

the position;<sup>1</sup> no oath appears to be required for the holder of the position; and no specific tenure (such as a term of years) is provided. Further, as the Edgefield Director, the Bamberg County Emergency Services Director is compensated as a county employee.

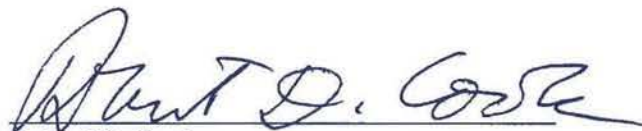
In reviewing the job descriptions of the both the Bamberg County Emergency Services Director and the E-911 Director you provided, as well as reviewing the criteria usually present in an office, it appears, as we opined in the case of the Edgefield Director, that the position of the Bamberg County Emergency Services Director is a position of employment, rather than an office. As the court noted in Sanders v. Belue, 78 S.C. 171, 174, 58 S.E. 762 (1907), "one who merely performs the duties required of him by persons employing him under an express contract or otherwise, though such persons be themselves public officers, and though the employment be in or about a public work or business, is a mere employee.

Accordingly, although the position of commissioner of public works is an office for purposes of dual office holding, it appears that the position of Bamberg County Emergency Services Director would be a position of employment, rather than an office. Therefore, it is the opinion of this Office that you may serve simultaneously as the Emergency Services Director and as a commissioner of public works without violating the dual office holding prohibition of the South Carolina Constitution.

Very truly yours,

  
ElizabethAnn L. Felder  
Assistant Attorney General

REVIEWED AND APPROVED BY:

  
Robert D. Cook  
Deputy Attorney General

---

<sup>1</sup> We do note and acknowledge that the Governor's Office has issued regulations with regard to Local Emergency Preparedness Standards, which include a description of the responsibilities of the County Emergency Preparedness Director. S.C. Code Ann. Regs. § 58-1 (1976).