



ALAN WILSON  
ATTORNEY GENERAL

March 27, 2012

The Honorable Dwight Causey  
Mayor, Town of Fairfax  
P. O. Box 52  
Fairfax, South Carolina 29827

Dear Mayor Causey,

We received your letter requesting an opinion of this Office concerning dual office holding. You ask whether the law permits you to accept a position of employment with the Town of Estill as a code enforcement officer during your term as Mayor for the Town of Fairfax.

#### Law/Analysis

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.” For a violation of this provision to occur, an individual must concurrently hold two public offices which have duties “involving an exercise of some part of the sovereign power” of the State. Sanders v. Belue, 78 S.C. 171, 174, 58 S.E.2d 762, 763 (1907). A public officer is “[o]ne who is charged by law with duties involving an exercise of some part of the sovereign power, either great or small, in the performance of which the public is concerned, and which are continuing, and not occasional intermittent, is a public officer.” Id., 58 S.E.2d at 762-63. Other relevant considerations include: “whether the position was created by the legislature; whether the qualifications for appointment are established; whether the duties, tenure, salary, bond, and oath are prescribed or required; whether the one occupying the position is a representative of the sovereign; among others.” State v. Crenshaw, 274 S.C. 475, 478, 266 S.E.2d 61, 62 (1980).

This Office has issued numerous opinions concluding that one who serves as the mayor of a municipality holds an office for purposes of the constitutional prohibition against dual office holding. See, e.g., Op. S.C. Att’y Gen., January 23, 2002; April 9, 1997; November 2, 1994; July 28, 1993; September 21, 1989. Thus, we must consider whether service as a municipal code enforcement officer also constitutes such an office.

We have issued several opinions concluding that a county code enforcement officer holds an office for purposes of dual office holding. See Ops. S.C. Att’y Gen., February 9, 2001; April 9, 1997. In our 1997 opinion, we explained our reasoning as follows:

The appointment of county code enforcement officers is authorized by S.C. Code Ann. § 4-9-145 (Supp. 1996). Pursuant to this statute, the governing body of the county may appoint and commission as many code enforcement officers as may be necessary for the proper security, general welfare, and convenience of the county. Code enforcement officers are vested with all the powers and duties conferred by law upon constables in addition to the duties imposed upon them by the governing body of the county. Id. These code enforcement officers are authorized to exercise their powers on all private and public property within the county. Id. Code enforcement officers commissioned under this statute are not permitted to perform a custodial arrest. Id. However, they are authorized to issue an ordinance summons to cite a violation of a county ordinance. S.C. Code Ann. § 56-7-80 (Supp. 1996).

Based on the foregoing description of the powers of a code enforcement officer, it is apparent that the officer exercises one of the traditional sovereign powers of the State: police power. While code enforcement officers are not given the power to perform a custodial arrest, they are given many of the other powers traditionally accorded to peace officers in this state, including the power to issue an ordinance summons on behalf of the county. Accordingly, I am of the opinion that a code enforcement officer for the Aiken County Tax Collector's Office would be considered an officer for dual office holding purposes.

Op. S.C. Att'y Gen., April 9, 1997.

The same reasoning would apply to a code enforcement officer of a municipality. Similar to section 4-9-145 concerning county code enforcement officers, section 5-7-32 provides the following with regards to municipal code enforcement officers:

A municipality may appoint and commission as many code enforcement officers as may be necessary for the proper security, general welfare, and convenience of the municipality. These officers are vested with all the powers and duties conferred by law upon constables in addition to duties imposed upon them by the governing body of the municipality. However, no code enforcement officer commissioned under this section may perform a custodial arrest. These code enforcement officers shall exercise their powers on all private and public property within the municipality.

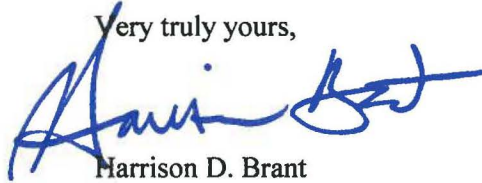
S.C. Code Ann. § 5-7-32.

Furthermore, the statutory section authorizing code enforcement officers to issue an ordinance summons applies to both county and municipal officers. See § 56-7-80 ("any county or municipal law enforcement officer or code enforcement officer is authorized to use an ordinance summons"). Thus, we believe a municipal code enforcement officer holds an office for purposes of dual office holding. Accordingly, it is the opinion of this Office that your service as a code enforcement officer for the Town

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of Estill during your term as Mayor of Fairfax would contravene Article XVII, section 1A of the Constitution.

Very truly yours,



Harrison D. Brant  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Deputy Attorney General