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The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON  
ATTORNEY GENERAL

August 3, 2000

Mr. Joseph Dawson, III, Esq.  
Deputy County Attorney  
2 Courthouse Square, Room 401  
Charleston, South Carolina 29401

**Re: Informal Opinion**

Dear Mr. Dawson:

By your letter of July 31, 2000, you have asked whether a dual office holding situation would exist if an individual were to serve simultaneously on the Charleston County Planning Commission and the South Carolina Coastal Zone Appellate Panel.

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, a member of a lawfully and regularly organized fire department, constable, or a notary public. As concluded by Attorney General Daniel McLeod in an opinion dated April 26, 1977, "[t]o determine whether a position is an office or not depends upon a number of circumstances and is not subject to any precise formula." The South Carolina Supreme Court, though, has held that 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). "One who is charged by law with duties involving an exercise of some part of the sovereign power, either small or great, in the performance of which the public is concerned, and which are continuing and not occasional or intermittent, is a public officer." Id., 78 S.C. at 174. Other relevant considerations, as identified by the Court, are whether statutes, or other authority, establish the position, prescribe its tenure, 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).

*Request Letter*

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Prior Opinions of this Office have consistently concluded that a member of a county planning commission would hold an office for dual office holding purposes. *See, e.g., Ops. Atty. Gen.* dated August 6, 1991; January 10, 1990 and January 23, 1989. Therefore, it must be determined whether membership on the South Carolina Coastal Zone Appellate Panel would likewise constitute an office.

As you know, the Coastal Zone Appellate Panel was created by S.C. Code Ann. §48-39-10 *et seq.* Pursuant to §48-39-10, panel members are elected by the General Assembly, and their terms of office are for four years and until successors are appointed and qualify. In addition to other duties, §48-39-150(D) provides, “[a]ny applicant having a permit denied or any person adversely affected by the granting of the permit has the right of direct appeal from the decision of the Administrative Law Judge Division to the Coastal Zone Appellate Panel.” Thus, the Panel is imparted with significant quasi-judicial responsibilities. This Office has concluded on numerous occasions that members of bodies whose duties are quasi-judicial in nature and involve the exercise of discretion are office holders. *See, e.g., Ops. Atty. Gen.* dated August 6, 1991; and June 1, 1984. Therefore, based upon the reasoning and conclusions of these earlier opinions, a member of the South Carolina Coastal Zone Appellate Panel would be deemed an office holder for dual office holding purposes. Accordingly, it is my opinion that a member of the Charleston County Planning Commission may not simultaneously serve on the South Carolina Coastal Zone Appellate Panel without contravening the dual office holding prohibitions of the State Constitution.

I trust this information is responsive to your inquiry and that you will not hesitate to contact me if I can be of additional assistance. This letter is an informal opinion only. It has been written by a designated Deputy Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I am

Sincerely yours,



Zeb C. Williams, III  
Deputy Attorney General