



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

February 27, 2001

The Honorable John D. Hawkins
Senator, District No. 12
Post Office Box 142
Columbia, South Carolina 29202

RE: Informal Opinion

Dear Senator Hawkins:

By your letter of February 14, 2001, you have requested an opinion of this Office concerning dual office holding. Specifically you ask if a person may serve simultaneously as a member of city council and as a member of the Spartanburg County Commission on Higher Education.

Article XVII, Section 1A of the State 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 public 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 such 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).

This Office has advised on numerous occasions that a member of a city or town council would be considered an officer for dual office holding purposes. See, as representative of those numerous opinions, OPS. ATTY. GEN. April 12, 1998; June 12, 1995; Feb. 4, 1994; July 23, 1993; July 24, 1991. We have also issued a prior opinion specifically addressing whether service on the Spartanburg County Commission on Higher Education would constitute dual office holding. See OP. ATTY. GEN. March 27, 1992. In that opinion we concluded that because the Commission members appear to exercise a portion of the sovereign power of the State by their powers and duties, the members would be officers for dual office holding purposes. A copy of this opinion is enclosed for your review. It appears there have been no significant statutory amendments since this issuance of this opinion that would affect its outcome. As such, the conclusion reached therein continues to remain the opinion of this Office. Thus, it is the opinion of this Office that service on both the town

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council and on the Spartanburg County Commission on Higher Education would contravene the dual office holding provision of the State Constitution.

This letter is an informal opinion only. It has been written by a designated Assistant Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I remain

Very truly yours,



Susannah Cole
Assistant Attorney General