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The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON  
ATTORNEY GENERAL

April 21, 1998

William R. Sims, Esquire  
106 South Hampton Street  
Kershaw, South Carolina 29067

RE: Informal Opinion

Dear Mr. Sims:

You have asked whether you may serve concurrently as a member of the Town of Kershaw Election Commission and as Lancaster County Attorney without contravening the dual office holding prohibitions of the South Carolina State Constitution.

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 county or municipal election commission would be considered an office holder for dual office holding purposes. Op. Atty. Gen. dated February 23, 1995 and opinions cited therein.

In regards to the position of Lancaster County Attorney, the determination of whether a county attorney is an office holder for dual office holding purposes is not clear cut. In an opinion dated July 13, 1981, it was stated:

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Whether or not a county attorney is an office would depend upon how the office itself is created. If the position is created by state statute or county ordinance and the duties of the position make it an office rather than mere employment, it would be violative of the dual office prohibitions of the State Constitution for one individual to hold the office of county attorney and another office.

In prior opinions, this Office has addressed several county attorney positions and concluded that these were not offices. See Op. Atty. Gen. dated November 20, 1989 (copy enclosed). In reaching these conclusions, in addition to the factors mentioned above, we focused on whether a statute or ordinance set a salary or term of office and whether an oath was required. Since I do not know the manner in which the position of Lancaster County Attorney was created, I would recommend examining the above referenced factors for guidance.

Based on the foregoing, the position of member of the Town of Kershaw Election Commission would be considered an office for dual office holding purposes. However, I am unable to determine whether the position of Lancaster County Attorney would also be considered an office. If after reviewing the above referenced factors and enclosed material, you have any further questions regarding the status of this position, please call me to discuss the matter.

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 questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kindest regards, I remain

Very truly yours,



Paul M. Koch  
Assistant Attorney General