



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

April 2, 1998

The Honorable William E. Myrick, Jr.
Municipal Judge, Town of Allendale
P.O. Box 551
Allendale, South Carolina 29810

RE: Informal Opinion

Dear Judge Myrick:

Your opinion request has been forwarded to me for reply. You have asked whether simultaneous service as a city councilman and a Community Specialist IV for the South Carolina Department of Juvenile Justice would violate the dual office holding prohibitions of the 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 city council would be considered an officer for dual office holding purposes. See, as representative of those numerous opinions, Ops. Atty. Gen. dated June 12, 1995; February 4, 1994; July 23, 1993; and July 24, 1991.

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This Office has never specifically addressed the question of whether a Community Specialist IV for the Department of Juvenile Justice would be considered an office holder for dual office holding purposes.¹ Therefore, I must review the duties of a Community Specialist IV to determine whether such position is an office. In making this determination, I will be relying on a job description of a Community Specialist IV provided by the Department of Juvenile Justice, Human Resources Division.

The job description provides, among other things, that the Community Specialist IV manages and coordinates all community field services, within the assigned county, to juveniles and families with delinquency related problems. Further, this individual provides supervision and rehabilitative counseling to juveniles and families in an effort to help children become responsible members of society. The individual also accepts referrals, processes complaints, conducts pre-sentence hearing investigations, prepares court documents and assists in adjudication hearings. Finally, this individual coordinates alternative placement of juveniles and provides follow-up supervision of juveniles and families.

Many of the duties of a Community Specialist IV are similar to those of a probation officer. This Office has previously concluded that a probation officer holds an office for dual office holding purposes. Ops. Atty. Gen. dated May 16, 1989 and July 11, 1984. In my opinion, since a Community Specialist IV exercises many powers similar to those of a probation officer, such position would also be considered an office for dual office holding purposes.

Based on the foregoing, since the positions of city councilman and Community Specialist IV for the Department of Juvenile Justice are both considered offices for dual office holding purposes, if an individual were to simultaneously serve in both positions, the dual office holding prohibitions of the State Constitution would be violated.

¹ This Office has previously addressed the question of whether the position of counselor for the Department of Youth Services would be an office for dual office holding purposes. Op. Atty. Gen. dated June 18, 1982. This opinion analyzed the statutory duties of the counselor and concluded the position was an office for dual office holding purposes. This conclusion was based on the fact that the counselor exercised powers similar to those of a probation officer. Since the time of this opinion, the statutes cited therein have been repealed. However, the conclusions reached in this opinion are persuasive in analyzing the question raised in your request.

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When a dual office holding situation occurs, the law operates to automatically "cure" the problem. If an individual holds one office on the date he assumes a second office, assuming both offices fall within the purview of Article XVII, Section 1A of the Constitution (or one of the other applicable constitutional prohibitions against dual office holding), he is deemed by law to have vacated the first office. However, the individual may continue to perform the duties of the previously held office as a de facto officer until a successor is duly selected to assume the duties or complete the term of office. Moreover, actions taken by a de facto officer in relation to the public or third parties will be considered as valid and effectual as those of a de jure officer unless or until a court would declare such acts void or remove the de facto officer from office. Ops. Atty. Gen dated April 8, 1996 and July 13, 1995.

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