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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON
ATTORNEY GENERAL

April 28, 1999

The Honorable Joe E. Brown
Member, House of Representatives
P. O. Box 11867
Columbia, South Carolina 29211

Dear Representative Brown:

RE: Informal Opinion

Dear Representative Brown:

Attorney General Condon has forwarded your opinion request to me for reply. You have informed this Office that Mr. Jackie Holman was elected mayor of Blackville in 1995 and was hired as a correctional officer by the Department of Corrections in 1997. You have asked whether simultaneous service as mayor and correctional officer violates the dual office holding prohibitions of the South Carolina Constitution. If the dual office holding prohibitions have been violated, you ask whether the actions taken by Mr. Holman since 1997 in his capacity as mayor are void.

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 exception 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).

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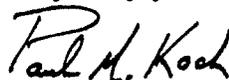
This Office has determined on numerous occasions that one who serves as a mayor of a municipality would hold an office for dual office holding purposes. Ops. Atty. Gen. dated September 18, 1997, July 8, 1991, June 19, 1987, September 23, 1980 and February 20, 1980. This Office has also determined that a correctional officer would hold an office for dual office holding purposes. Op. Atty. Gen. dated July 3, 1984. Accordingly, if an individual serves simultaneously as mayor of Blackville and correctional officer employed by the Department of Corrections, the dual office holding prohibitions of the Constitution would be violated.

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. 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