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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON
ATTORNEY GENERAL

March 2, 2000

Mr. Ronnie Jackson
DJJ County Office Manager
1 Courthouse Square
Post Office Box 777
Allendale, South Carolina 29810-0765

RE: Informal Opinion

Dear Mr. Jackson:

You inform this Office you presently hold the position of County Office Manager 1 for the Department of Juvenile Justice. You indicate that you are considering running for Mayor of the Town of Allendale. You ask whether the dual office holding prohibitions of the State Constitution would be violated if you were to simultaneously serve in both positions.

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 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.

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Request Letter

We have never addressed the specific question of whether the position of County Office Manager 1 with the Department of Juvenile Justice is an office for dual office holding purposes. Often times when making a determination of whether a particular position is an office, especially with a position like yours, we must rely solely on representations made and information provided by interested parties. This Office is not in a position to question the accuracy of such representations and information. Here, this opinion will be based on a job description, which you have provided, for the position of County Office Manager 1. I have been informed by counsel for the Department of Juvenile Justice that this is an adequate description of your position. In addition, I have discussed this question with counsel for the Department. Counsel does not believe that this position exercises the sovereign power of the state. Since counsel is much more knowledgeable of the actual duties of a County Office Manager 1 than this Office, we will give great deference to counsel's opinion.

The job description for the County Office Manager 1 provides as follows:

> Under limited supervision, plans, directs, supervises, and provides technical assistance to staff in operation and administration of the juvenile program in a county or specialized court jurisdiction; performs these duties involving choice of action within broadly established guidelines; exercises judgment in the implementation of policies and procedures.

Based on this job description and counsel's opinion, it does not appear that a County Office Manager 1 meets the criteria typically associated with an office holder. Instead, it would seem that an individual serving in such a position would be more appropriately characterized as an employee of the Department of Juvenile Justice. Therefore, it would not appear that the dual office holding prohibitions of the State Constitution would be violated if an individual were to simultaneously serve as mayor and County Office Manager 1. However, I must caution that if a court were to analyze this issue, it would pay closer attention to the actual duties being performed rather than a description thereof and may reach a contrary conclusion based on that information.

I call your attention to the fact that a state agency may promulgate its own rules and regulations which govern an employee of the agency. Therefore, I would recommend that you contact the proper authorities at the Department of Juvenile Justice to determine their rules and regulations on this subject. Further, if a state employee is paid in whole or in part by federal funds, or if the employee's job is related to an activity which receives federal funds, the employee may come within the provisions of the Hatch Act. Therefore, I would also recommend you contact the proper authorities to make this determination.

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 best personal regards, I am

Sincerely yours,

Paul M. Koch
Assistant Attorney General