

The State of South Carolina



Office of the Attorney General

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January 8, 1986

George Hammett, Chairman
City of Belton Election Commission
110 Blair Road
Belton, South Carolina 29627

Dear Mr. Hammett:

Bob Cook, Executive Assistant for Opinions, asked that I respond to your dual office holding and other related questions. He also asked that I advise that this Office communicated with Thomas B. Austin of the City of Belton in this matter; a copy of the letter sent to Mr. Austin, dated December 12, 1985, is enclosed herewith.

Your first question was whether one who would serve simultaneously as a deputy sheriff and as a member of a city council would violate the dual office holding prohibitions of the State Constitution.

Article XVII, § 1A of the South Carolina Constitution provides that "... no person shall hold two offices of honor or profit at the same time." 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 tenure, 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). In Crenshaw, a police officer was found to be an officer within the constitutional meaning of the term; similarly, this Office has determined that deputy sheriffs would also be officers. See Ops. Atty. Gen dated February 23, 1979; September 23, 1980; and February 16, 1983, all enclosed, as representative opinions.

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Likewise, this Office has repeatedly concluded that a member of a town or city council would hold an office for dual office holding purposes. See Ops. Atty. Gen. dated January 31, 1984; April 20, 1981; and July 8, 1982, copies enclosed, as representative opinions. Thus, one who would serve simultaneously on a city council and as a deputy sheriff would be considered to hold dual offices, in violation of the above-cited provisions of the State Constitution.

You also wished to know whether one presently a deputy sheriff may offer for election for the position of city council member. Please be advised that there are no statutory or constitutional prohibitions against a deputy sheriff running for an elective office. See Ops. Atty. Gen. dated November 2, 1978; December 5, 1979; and August 24, 1982, copies of which are enclosed, as to a public employee running for elective office. There may be a policy of the sheriff's department concerning a deputy's running for elective office, however. Another consideration would be the federal Hatch Act, which would possibly affect one's candidacy if any activity of his employment is funded with federal funds. For more information on the Hatch Act, you may wish to contact the U. S. Merit Systems Protection Board, 1120 Vermont Avenue NW, Washington, D. C. 20419.

You have also asked whether the city council election might be invalidated if one serving as a deputy sheriff ran for one of the positions on city council. We would advise that this fact alone would not cause an election to be invalidated.

We hope that we have satisfactorily responded to your inquiries. Please advise us if you have additional questions or need clarification.

Sincerely,

Patricia D. Petway
Patricia D. Petway
Assistant Attorney General

PDP/an

Enclosures

REVIEWED AND APPROVED BY:


Robert D. Cook
Executive Assistant for Opinions