

# The State of South Carolina



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May 20, 1986

The Honorable D. N. Holt, Jr.  
Member, House of Representatives  
330-C Blatt Building  
Columbia, South Carolina 29211

Dear Representative Holt:

You have asked whether one person may serve concurrently on the Charleston County Election Commission and as a member of the City Council for the City of North Charleston, without contravening the dual office holding prohibition of the Constitution of the State of South Carolina. For the reasons following, it is the opinion of this Office that dual office holding would most probably exist if one person were to serve in both capacities concurrently.

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).

This Office has issued several opinions concluding that one who would serve on a county election commission would hold an office for dual office holding purposes. Enclosed are opinions so concluding, dated September 24, 1982 relative to the Florence County Election Commission and March 21, 1978 as to the Marion County Election Commission. These opinions would also apply to one appointed to serve on the Charleston County Election Commission.

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Similarly, this Office has concluded on numerous occasions that one who serves on the governing body of a municipality would hold an office for dual office holding purposes. See, for example, opinions dated January 31, 1984; July 8, 1982; and June 18, 1982, copies of which are enclosed. Because both positions would thus be offices, one who would occupy both concurrently would most probably contravene the dual office holding prohibitions of the State Constitution.

Apparently the individual in question had been appointed to serve on the Election Commission prior to his election to City Council. It must be noted that Section 7-13-70, Code of Laws of South Carolina (1976), provides that appointees are to "continue in office until their successors are appointed and qualified." If one person hold an office on the date he assumes a second office, both offices falling within the provisions of Article XVII, § 1A of the Constitution, he is deemed to have vacated the former office. However, as is provided in Section 7-13-70 of the Code, that person may continue to perform the duties of the previously-held office as a de facto officer, rather than de jure, until his successor has been duly selected and qualified. See, Walker v. Harris, 170 S.C. 242 (1933); Dove v. Kirkland, 92 S.C. 313 (1912); State v. Coleman, 54 S.C. 282 (1898); State v. Buttz, 9 S.C. 156 (1877). 1/

In conclusion, it is the opinion of this Office that one who would concurrently serve on the Charleston County Election Commission and on the City Council of the City of North Charleston would most probably contravene the dual office holding prohibitions of the State Constitution. By operation of law, the individual would vacate the first office upon assumption of the second, though he may continue in the first office, serving de facto, until his successor has been selected and qualified.

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1/ A de jure officer is "one who is in all respects legally appointed and qualified to exercise the office." 63 Am.Jur.2d Public Officers and Employees § 495. A de facto officer is "one who is in possession of an office, in good faith, entered by right, claiming to be entitled thereto, and discharging its duties under color of authority." Heyward v. Long, 178 S.C. 351, 183 S.E. 145, 151 (1936); see also Smith v. City Council of Charleston, 198 S.C. 313, 17 S.E.2d 860 (1942) and Bradford v. Byrnes, 221 S.C. 255, 70 S.E.2d 228 (1952).

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We trust that we have satisfactorily responded to your inquiry. If you need further assistance or clarification, please advise.

Sincerely,

*Patricia D. Petway*

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Enclosures

REVIEWED AND APPROVED BY:

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