

1983 S.C. Op. Atty. Gen. 149 (S.C.A.G.), 1983 S.C. Op. Atty. Gen. No. 83-90, 1983 WL 142759

Office of the Attorney General

State of South Carolina

Opinion No. 83-90

November 15, 1983

\*1 Mr. James L. Solomon, Jr.  
Member  
Richland County Council  
Post Office Box 192  
Columbia, South Carolina 29202

Dear Mr. Solomon:

You have inquired whether holding simultaneously the position of a member of Richland County Council and Commissioner of the South Carolina Department of Social Services would violate the dual office holding provisions of the South Carolina Constitution. It is our opinion that it would.

[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 consistently concluded that a member of county council holds an ‘office’ for purposes of [Article XVII, § 1A, 1975 Op. Atty. Gen. No. 4176, p. 233](#) (copy enclosed).

Likewise, we would conclude that the Commissioner of the Department of Social Services holds an ‘office’ for purposes of the dual office holding provision. The position is created pursuant to [§ 43-1-50 of the Code of Laws of South Carolina](#) (1976 as amended). This provision designates the Commissioner as the ‘chief executive officer’ and ‘administrative head’ of D.S.S. [Section 43-1-50](#) also explicitly specifies that the Commissioner ‘shall hold office until his successor has been elected and qualified.’ (emphasis added) A fixed compensation is authorized for the Commissioner, to be designated by the D.S.S. Board, pursuant to [§ 43-1-50](#).

Moreover, it is clear that the Commissioner is authorized by the above provision, as well as a number of other statutes relating to D.S.S., to exercise a portion of the State’s sovereign powers. The Commissioner must execute the decisions and carry out the policies of the Board and see that the laws relating to the activities and responsibilities of the Board are obeyed. [§ 43-1-50](#). Various other sovereign functions are specifically delegated by law to the Department of Social Services, see e.g. Chapter 1 of Title 43; again, as the Department’s chief executive officer, the Commissioner must insure that these laws are executed. Therefore, just as in [Sanders](#), which also involved a chief executive officer of an agency similar in purpose to D.S.S., the Commissioner of D.S.S. necessarily ‘exercises a part of the sovereign power.’ 78 S.C., [supra](#) at 175. Accordingly, he holds an ‘office’ for purposes of [Article XVII, § 1A](#).

As to the effect of dual office holding, a person is deemed to have abandoned his first office when a second office is accepted. [Darling v. Brunson, 94 S.C. 207, 77 S.E. 860 \(1912\)](#). He serves in the first office in a de facto capacity only; however, his actions are considered valid as affects the general public. [Walker v. Harris, 170 S.C. 242, 170 S.E. 270 \(1932\)](#); 1961 [Op. Atty. Gen. No. 1125](#) (copy enclosed).

\*2 If we can be of further assistance, please let us know.

With kind regards, I am  
Very truly yours,

Frank K. Sloan  
Chief Deputy Attorney General

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