

1983 WL 182013 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 29, 1983

*1 The Honorable Jeff R. Richardson, Jr.
Senator
District No. 2
712 E. McBee Avenue
Greenville, South Carolina 29601

Dear Senator Richardson:

By your letter of June 20, 1983, you have asked whether it would be a violation of the dual office holding provisions of the South Carolina Constitution to serve as Director of the Greenville County Law Enforcement Support Department as well as Mayor or a member of the City Council of Simpsonville.

[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 \(1980\)](#). There is no question but that the position of mayor falls within this definition. [See](#) Opinion of the Attorney General, dated January 10, 1975, a copy of which is enclosed herewith.

This office has also determined previously that a member of a city council holds an office within the meaning of the dual office holding provisions of the South Carolina Constitution. [See](#) Opinions of the Attorney General, dated September 30, 1981 and June 18, 1982, copies of which are enclosed herewith.

The position of Director of the Greenville County Law Enforcement Support Services was created by Ordinance No. 1044 of Greenville County, effective October 19, 1982. The Director is appointed by the Greenville County Administrator and serves at the pleasure of the Administrator. The position is salaried, has no specific tenure, and allows for little exercise of discretion, the final or overriding authority for decision-making vesting in the County Administrator.^a Given this set of facts, it appears that the position of Director of the Greenville County Law Enforcement Support Services constitutes employment rather than holding an office.

In conjunction with the position of Director, however, the person so employed has also been commissioned a State Constable, in lieu of being deputized by the Greenville County Sheriff, to carry out his law enforcement duties. This office has concluded on a number of occasions that persons holding constable's commissions are officers for the purposes of dual office holding. [See](#), Opinion of the Attorney General, dated October 27, 1977, a copy of which is enclosed herewith.

Based on the foregoing, it is the opinion of this office that holding the office of Mayor or Councilman while also being commissioned a State Constable would violate the dual office holding provisions of the South Carolina Constitution. If the position as Director of the Greenville County Law Enforcement Support Services could be held without being commissioned as a State Constable, then no violation of the dual office holding provisions would exist.

*2 By your letter you have advised that the person in question is considering his candidacy for Mayor or Councilman of the Town of Simpsonville. Of course, until and unless he is elected and qualifies, no dual office holding problem exists. However, if a person continues to hold an office within the meaning of [Article XVII, § 1A](#) on the date he enters another such office, he is deemed to have vacated the former office. However, the person may continue to perform the duties of the previously obtained office as a *de facto* officer until a successor is duly selected to complete his term of office. [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 \(1877\)](#).

I apologize for the delay in getting this opinion to you and hope that your constituent's questions have been answered. If we may be of further assistance, please contact me.

Sincerely,

Patricia D. Petway
Staff Attorney

Footnotes

- a** It is assumed, for the purposes of this opinion, that no additional powers are conferred upon the Director by the ordinance and further that the ordinance was not intended to confer actual law enforcement authority upon the Director.

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