

1977 S.C. Op. Atty. Gen. 297 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-372, 1977 WL 24709

Office of the Attorney General

State of South Carolina  
Opinion No. 77-372  
November 18, 1977

\*1 Daniel Fulton, Esquire  
Attorney at Law  
P. O. Box 552  
Columbia, SC 29202

Dear Mr. Fulton:

You have requested an opinion on behalf of your client, who has served as a deputy county coroner and a member of the county recreation commission, concerning whether or not the client is committing dual office holding.

The individual in question was appointed to the recreation commission on October 28, 1975, and served until May 1977. However he did not receive his commission for that office until it was issued on April 20, 1977. During this eighteen month delay, on January 1, 1977, the individual was appointed a deputy coroner by the county coroner.

It has been previously determined by this Office that both deputy coroners and county recreation commission members hold offices subject to constitutional restrictions on dual office holding. Therefore your client at one time was holding two offices in violation of these constitutional restrictions.

The remaining question for discussion is which office, if any, your client now holds validly. The general rule is that the acceptance of the second office acts as a vacation of the first office. However, your client was not commissioned into the first office until after accepting the second office.

The general statement of the law concerning the effective date of an appointed office is that the office holder legally assumes his position only after he has been validly commissioned into the office. The authorities relied on for this proposition are 67 C. J. S. OFFICERS, § 45 and 63 Am. Jur. 2d Public Officers and Employees, §§ 114, 115.

Such an interpretation of the law is also concurred in by the Secretary of State's Office, which advises that an individual is not qualified to hold an appointed office until he is commissioned, irrespective of the date of appointment.

Therefore, your client did not technically assume the recreation commission office until April 20, 1977. His previous service in this capacity was de facto. At the time he received his commission he was already serving as a deputy coroner, and the assumption of the second office acted as a vacation of the deputy coroner office. Your client would currently have been a valid member of the county recreation commission, but he has apparently resigned this position. The client now serves in the deputy coroner's position as a de facto office holder, until his successor is appointed and qualified. See, [Darling v. Brunson](#), 94 S. C. 207, 77 S. E. 860; [State of South Carolina v. Buttz](#), 9 S. C. 156, — S. E. —; 1961 Op. Atty. Gen. No. 1125 (copy attached).

As you will note from the attached Opinion, your client's acts as a de facto officer were and are legally valid as to all third parties. To correct the technical deficiency now existing, he should be re-appointed to his position of deputy coroner.

I hope this information will be helpful to your client.  
Sincerely,

\*2 George C. Beighley  
Assistant Attorney General

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