

1976 WL 30620 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 20, 1976

*1 One holding the position of Horry County jailer and city councilman is not in violation of the prohibition against dual office holding.

Phillip D. Sasser
City Attorney
Conway, South Carolina

QUESTION PRESENTED:

Does the position of Horry County jailer constitute an office subject to constitutional restrictions on dual office holding so as to prohibit a person from serving as Horry County jailer and city councilman simultaneously.

STATUTES, CASES, ETC:

South Carolina Constitution, Article VI, Section 3 and Article XVII, Section IA;

Code of Laws of South Carolina, 1962, as amended, Section 53-554;

[Sanders, et al. v. Belue, et al.](#), 78 S. C. 171, 58 S. E. 762.

DISCUSSION OF ISSUES:

Article XVII, Section IA of the South Carolina Constitution, provides that no person shall hold two offices of honor or profit at the same time. An office has been defined by the South Carolina Supreme Court in [Sanders, et al., v. Belue, et al.](#), 78 S.C.171, 58 S. E. 762 as follows:

One who is charged by law with duties involving an exercise of some part of the sovereign power, either small or great in the performance of which the public is concerned, and which are continuing and not occasional or intermittent, is a public officer.

It has long been the opinion of this Office that membership on a city council constitutes an office within the [Sanders](#) definition. [See](#), 1964-65 Op. Atty. Gen., No. 1846, p. 104; 1971-72 Op. Atty. Gen., No. 3309, p. 127; 1964-65 Op. Atty. Gen., No. 1902, p. 188; 1964-65 Op. Atty. Gen., No. 2106, p. 211.

The question then becomes whether or not the position of Horry County jailer is also an office. Section 53-554 of the Code of Laws of South Carolina, 1962, as amended provides:

The (Horry County police) commission shall employ the jailer, assistant jailer, secretary and all other personnel necessary for the carrying out of the provisions of this article and for the orderly process of law enforcement and the upkeep and maintenance of the county jail.

The Horry County jailer is hired by the county police commission and apparently serves at the pleasure of that commission. The Horry County Jailer exercises no part of the sovereign power within the meaning of the Sanders definition and is, therefore, an employee of the county.

CONCLUSION:

A person simultaneously holding the position of Horry County jailer and city councilman would not be in violation of the prohibition against dual office holding.

George C. Beighley
Assistant Attorney General

1976 WL 30620 (S.C.A.G.)