



ALAN WILSON
ATTORNEY GENERAL

March 24, 2017

The Honorable Rick Martin, Member
South Carolina House of Representatives
District No. 40
418-D Blatt Building
Columbia, SC 29201

Dear Representative Martin:

Attorney General Alan Wilson has referred your letter dated March 8, 2017 to the Opinions section for a response. The following is this Office's understanding of your question and our opinion based on that understanding.

Issue:

Would serving as both the mayor pro tempore on a town council and deputy county coroner be a conflict?

Law/Analysis:

As you are aware, the South Carolina Constitution prohibits holding more than one office of honor or profit at one time. S.C. Const. Arts. 6 § 3; 17 § 1 A. This Office has previously answered the question of whether one may serve both as a mayor pro tempore on a municipal council and as a deputy county coroner. See Op. S.C. Att'y Gen., 2001 WL 129342 (S.C.A.G. January 22, 2001). In that opinion, we concluded that both the position of mayor pro tempore and the position of deputy county coroner were offices of honor or profit and that holding both positions would violate the South Carolina Constitution's prohibition of holding more than one office of honor or profit at a time. Id. This opinion based its reasoning on prior opinions that concluded both positions were offices. Id. We have included a copy of the 2001 opinion with this letter for your records, and the opinion is available on our website by the date it was issued at www.scag.gov/opinions.

As a general rule, this Office recognizes a long-standing tradition that it will not overrule a prior opinion by this Office unless it is clearly erroneous or a change occurred in the applicable law. See, e.g., Ops. S.C. Att'y Gen., 2013 WL 6516330 (November 25, 2013); 2013 WL 3762706 (July 1, 2013); 2009 WL 959641 (March 4, 2009); 2006 WL 2849807 (September 29, 2006); 2005 WL 2250210 (September 8, 2005); 1986 WL 289899 (October 3, 1986); 1984 WL 249796 (April 9, 1984). Thus, in the absence of a change in the law or clear error, we will maintain the same opinion. Nevertheless, we want you to know a mayor pro tempore is an office established by statute (see S.C. Code § 5-7-190) as is the office of deputy coroner (see S.C. Code § 17-5-115, et seq.). This Office still uses the criteria in the Crenshaw case to determine if a position is an office of "honor or profit" for dual office holding purposes. See State v. Crenshaw, 274 S.C. 475, 266 S.E.2d 61 (April 9, 1980). The criteria in Crenshaw consist of four questions, though not all of them need to be met to be an office:

- 1) Was the position created by the General Assembly?
- 2) Are there established qualifications for appointment?
- 3) Are duties, tenure, salary, bond and oath required or prescribed?

4) Is the position representative of sovereign powers of the State?¹

Id. The law specifically prohibits a mayor from holding any other municipal office or employment, though we recognize your question involves the position of a deputy county coroner. See S.C. Code Ann. § 5-7-180.

Conclusion:

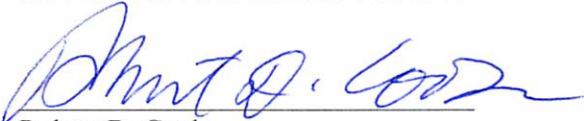
Please review our January 22, 2001 opinion where we concluded that serving as both mayor pro tempore and a deputy county coroner would violate the South Carolina Constitution's prohibition against holding more than one office of honor or profit at the same time (also referred to as the prohibition of dual office holding). Moreover, this Office also must caution against violations of the common law master-servant principle. See, e.g., McMahan v. Jones, 94 S.C. 362, 77 S.E. 1022 (1913) (prohibiting one from holding two positions resulting in the same person to be both master and servant in service to the public). Additionally, please consult with the South Carolina Ethics Commission for any questions regarding any potential ethical conflicts. Nevertheless, this Office is only issuing a legal opinion based on the current law at this time and the information as provided to us. Until a court or the General Assembly specifically addresses the issues presented in your letter, this is only an opinion on how this Office believes a court would interpret the law in the matter. Additionally, you may also petition the court for a declaratory judgment, as only a court of law can interpret statutes and make such determinations. See S.C. Code § 15-53-20. If it is later determined otherwise, or if you have any additional questions or issues, please let us know.

Sincerely,



Anita (Mardi) S. Fair
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General

¹ The sovereign powers of the State traditionally include taxing, police power and eminent domain. Op. S.C. Atty. Gen., 2016 WL 4698870 (S.C.A.G. Aug. 24, 2016) (citing Op. S.C. Att'y Gen., 1996 WL 599391 (September 6, 1996) (citing Philadelphia Nat. Bank v. U.S. of America, 666 F.2d 834 (3rd Cir. 1981))).