



ALAN WILSON
ATTORNEY GENERAL

March 8, 2018

The Honorable Kent M. Williams, Member
South Carolina Senate
PO Box 142
Columbia, SC 29202

Dear Senator Williams:

You have requested an opinion from this Office regarding whether an individual can serve as both a member of the Marion County Council and as a correctional officer (rank of lieutenant) at the Marion County Detention Center.

LAW/ANALYSIS:

Dual office holding is prohibited by the South Carolina Constitution, which provides:

[n]o person may hold two offices of honor or profit at the same time, but any person holding another office may at the same time be an officer in the militia, member of a lawfully and regularly organized fire department, constable, or a notary public...The limitation above set forth does not prohibit any officeholder from being a delegate to a constitutional convention.

S.C. Const, art. XVII § 1 A.

The South Carolina Supreme Court explains that an "office" for dual office holding purposes is:

"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." *Sanders v. Belue*, 78 S.C. 171, 174, 58 S.E. 762, 763 (1907). "In considering whether a particular position is an office in the constitutional sense, it must be demonstrated that "[t]he power of appointment comes from the state, the authority is derived from the law, and the duties are exercised for the benefit of the public." *Willis v. Aiken County*, 203 S.C. 96, 103 26 S.E.2d 313, 316 (1943). "The powers conferred and the duties to be discharged with regard to a public office must be defined, directly or impliedly, by the legislature or through legislative authority..." 63C Am Jur.2d Public Officers and Employees § 5 (2009).

Segars-Andrews v. Judicial Merit Selection Commission, 387 S.C. 109, 691 S.E.2d 453 (2010).

Other relevant considerations are: “whether the position was created by the legislature; whether the qualifications for appointment are established; whether the duties, tenure, salary, bond, and oath are prescribed or required; whether the one occupying the position is a representative of the sovereign; among others.” See Op. S.C. Atty. Gen., 2013 WL 3243063 (June 17, 2013) (quoting State v. Crenshaw, 274 S.C. 475, 478, 266 S.E.2d 61, 62 (1980)).

Our Office has concluded that a county council member is a public officer in several prior opinions. “This Office has consistently advised that a position on a county council constitutes an office.” Op. S.C. Atty. Gen., 2014 WL 1398598 (February 3, 2014) (quoting Op. S.C. Atty. Gen., 1977 WL 24461, No. 77 – 119 (April 26, 1977)).

Our Office also has concluded in a previous opinion that a county correctional officer holds an office. See Op. S.C. Atty. Gen., 2010 WL 1370081 (March 12, 2010). In an opinion dated March 12, 2010, our Office summarized certain prior opinions and opined that a county correctional officer exercises a portion of the sovereign power of the State because of his status as a peace officer¹ and his “day-to-day duty of preserving law and order as well as enforcing the law within the correctional system.” Id. at *2.

When these prior opinions of our Office are read together, the resulting conclusion is that concurrently serving as both a member of a county council and a county correctional officer would violate South Carolina's constitutional prohibition on dual office holding. See Ops. S.C. Att'y Gen., supra. Furthermore, the South Carolina Code provides that county council members are prohibited from holding any other office of honor or profit in government, except military commissions and commissions as notaries public. See S.C. Code Ann. § 4-9-100 (1976 Code, as amended). Accordingly, we believe that service as both a member of the Marion County Council and as a correctional officer (rank of lieutenant) at the Marion County Detention Center would violate both the constitutional prohibition against dual office holding and section 4-9-100.

CONCLUSION:

It is our opinion that service as both a member of the Marion County Council and as a correctional officer (rank of lieutenant) at the Marion County Detention Center violates both the constitutional prohibition against dual office holding and Section 4-9-100 of the South Carolina Code.

¹ See S.C. Code Ann. § 23-1-145, which states:

Employees of any county or municipal jail, prison, work camp or overnight lockup facility, while performing their officially assigned duties relating to the custody, control, transportation or recapture of any inmate or prisoner in this State, shall have the status of peace officers anywhere in the State in any matter relating to the custody, control, transportation or recapture of such inmate or prisoner. *Provided*, that for the purposes of this section no trustee shall be considered an employee.

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Sincerely,



Elinor V. Lister
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General