



ALAN WILSON
ATTORNEY GENERAL

March 27, 2019

Carlos G. Perez V.
Animal Control Director
Chesterfield County Animal Services
436 Goodale Road
Chesterfield, SC 29709

Dear Mr. Perez:

You have requested an opinion from this Office regarding whether it would be dual office holding for you to work full-time as Animal Control Director of Chesterfield County Animal Services and to work part-time as a police officer with the Town of Chesterfield's Police Department.

You have provided us with the following information:

Chesterfield County does not have an ordinance creating the position of Animal Shelter Administrative Director.¹ The Public Works Director is the one who hires the individual to fill this position.

The Shelter Administrative Director is not required to take an oath of office.

The Shelter Administrative Director has no authority in matters relating to the creation and allocation of funds for the yearly spending budget for the shelter. The duties of the director are to ensure the shelter remains within the spending limits of the budget which is assigned by the county council and the Public Works Director.

The Shelter Administrative Director supervises all employees including the compliance officers but it is ultimately the Public Works Director who hires and terminates shelter employees.

Animal Services is not a constitutional agency; it is under the purview of county public works department, not in concurrence with any private rescue or other institution.

¹ Your official job title is Animal Control Director per the Job Description that was provided to us by the Chesterfield County Human Resources Director.

Our Office has been provided with the Job Description for Chesterfield County's Animal Control Director. We have also been provided with copies of Chesterfield County ordinances regarding Animal Services since, to the best of our knowledge, Chesterfield County's Code of Ordinances is not published.

LAW/ANALYSIS:

We will begin with a general discussion of dual office holding. 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 for an office 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.

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)).

In Sanders v. Belue, the State Supreme Court explained that “one who merely performs the duties required of him by persons employing him under an express contract or otherwise, though such persons be themselves public officers, and though the employment be in or about a public work or business, is a mere [employee].” Sanders v. Belue, 78 S.C. at 172, 58 S.E. at 763.

We have previously stated: “[t]his Office has advised on many occasions that a police officer or police chief would be considered an office holder for dual office holding purposes.” Op. S.C. Atty. Gen., 2011 WL 2214066 (May 19, 2011) (citing Ops. S.C. Atty. Gen., October 14, 2010; February 4, 1994; November 2, 1994; September 8, 1992)).

Therefore, the issue is whether the Animal Control Director of Chesterfield County Animal Services is also a public officer. The South Carolina Legislature has delegated general authority to counties to enact ordinances “in relation to health and order in counties or respecting any subject as appears to them necessary and proper for the security, general welfare, and convenience of counties or for preserving health, peace, order, and good government in them.” S.C. Code Ann. § 4-9-25 (1976 Code, as amended). Specifically, counties are granted authority over the care and control of animals:

The governing body of each county or municipality in this State may enact ordinances and promulgate regulations for the care and control of dogs, cats, and other animals and to prescribe penalties for violations.

S.C. Code Ann. § 47-3-20 (1976 Code, as amended).

The Legislature has also granted counties the authority to establish and fund animal shelters:

The governing body of the county or municipality is authorized to establish an animal shelter for the county or municipality for the purpose of impounding and quarantining dogs and quarantining cats and shall employ such personnel, including enforcement personnel, as may be necessary to administer the provisions of this article.² If an animal shelter is established, funds to establish and operate the shelter and employ necessary personnel may be provided in the annual county or municipal appropriations.

S.C. Code Ann. § 47-3-30 (1976 Code, as amended). Pursuant to section 47-3-10(2), “animal shelter” includes:

any premises designated by the county or municipal governing body for the purpose of impounding, care, adoption, or euthanasia of dogs and cats held under authority of this article

S.C. Code Ann. § 47-3-10(2) (1976 Code, as amended).

² Article 1, S.C. Code Ann. §§ 47-3-10 – 47-3-75 (1976 Code, as amended).

Although the South Carolina Code of Laws does not directly provide for a director of an animal shelter, it does provide that “[c]omplete records must be kept by shelter officials as to the disposition of all animals impounded.” S.C. Code Ann. § 47-3-60 (1976 Code, as amended).

Under South Carolina law, the Chesterfield County Council has general authority for the care and custody of animals in Chesterfield County. The County Council is granted the power to establish a county animal shelter, fund it, and employ necessary personnel. However, to the best of our knowledge, Chesterfield County’s Code of Ordinances is not published. Because our Office does not have the ability to independently research this matter, any conclusion that we reach in this opinion will be based on the ordinances that were provided to us.

The Chesterfield County ordinances that were provided to us state that “[t]he Animal Services Director shall have the authority to determine if an animal is a dangerous or vicious animal using the criteria set forth in S.C. Code § 47-3-710, as amended.”³ Chesterfield County, S.C. Code of Ordinances, Ordinance No. 11-12-14, Section 8 (Feb. 1, 2012). This is the only reference to a director of Animal Services that we could find in the ordinances.

The Job Description that was provided to this Office contains a “General Statement of Job” for the Chesterfield County Animal Control Director:

Under limited supervision, ensures the overall efficiency and effectiveness of the department through accountability for all administrative functions of the department to include budget, personnel and citizen development. Supervises personnel for the keeping of regulations, and the protection of animals. Reports to the County Administrator.⁴

Job Description, General Statement of Job.

Furthermore, the Job Description provides “Specific Duties and Responsibilities” of the position. “Essential Job Functions” are:

operating the County animal shelter according to State law and regulations; maintaining records and files and also preparing reports; preparing a yearly budget for Administration approval, maintaining same, and reporting all discrepancies to Finance Director; interviewing complainants, animal owners and others to obtain information used in making responsible decisions concerning the welfare of the animals; preparing and submitting to proper authority reports related to the activities of the animal control division; providing advice and assistance

³ Section 47-3-710 defines a “dangerous animal” and what is not included as a “dangerous animal.” See S.C. Code Ann. § 47-3-710 (1976 Code, as amended).

⁴ We have been informed that Chesterfield County is in the process of updating its ordinances to provide that the County Administrator, and not the County Public Works Director, will be overseeing the Animal Services Department. Accordingly, the positions of County Administrator and County Public Works Director will be considered the same for purposes of this opinion.

to the public, humane groups, and other related to the control of animals in the county; maintaining effective public relations, assisting citizens, conducting programs, mediation and information activities, including volunteer programs; monitoring and supervising the daily activity of Animal Control Staff.

Job Description, Specific Duties and Responsibilities, Essential Job Functions.

Pursuant to the Job Description, "Additional Job Functions" are performing related duties as required. Job Description, Specific Duties and Responsibilities, Additional Job Functions.

State law does not directly provide for a director of an animal shelter and the Chesterfield County ordinances only briefly refer to the position of Animal Services Director. Additionally, neither State nor local law provides for the qualifications for appointment, a salary, a term, or a bond or oath for your position. Instead, our understanding from your letter is that your position is hired by the Chesterfield County Administrator and receives a salary, which has not been disclosed to us.

Both State and local law only briefly mention the duties of a director of an animal shelter. State law provides that "[c]omplete records must be kept by shelter officials as to the disposition of all animals impounded." S.C. Code Ann. § 47-3-60(C) (1976 Code, as amended). County law provides that a director of Chesterfield County Animal Services has the authority to determine if an animal is a "dangerous animal" based on a criteria that has been established by the State Legislature. Chesterfield County, S.C. Code of Ordinances, Ordinance No. 11-12-14, Section 8, supra. Since neither of these duties involves an exercise of the sovereign power of the State, we will examine the remainder of your duties.

The remainder of your duties do not involve an exercise of the sovereign power of the State. Instead, it appears that the County Administrator controls the Chesterfield County Animal Services. As Animal Control Director, you report to the County Administrator. Job Description, General Statement of Job. You are required to prepare a yearly budget for Administration approval, maintain the budget, and report discrepancies to the Finance Director. Job Description, Specific Duties and Responsibilities, Essential Job Functions. You prepare and submit reports concerning the activities of the animal control division to the proper authority, which we presume is the County Administrator, since you report to him. Job Description, Specific Duties and Responsibilities, Essential Job Functions. Additionally, you perform related duties as required, we assume by the County Administrator. Job Description, Specific Duties and Responsibilities, Additional Job Functions.

Although the Animal Control Director monitors and supervises the daily activities of the employees, including the compliance officers,⁵ "[t]he animal control officer(s) shall work under the supervision of the Public Works Director⁶ and in cooperation with the State Environmental Health Supervisor." Chesterfield County, S.C. Code of Ordinances, Ordinance No. 98-99-06, Section 2 (Jan. 11, 1999). Our understanding from your letter is that the County Administrator's supervision of the animal control officers extends to their hiring and firing.

⁵ Job Description, Specific Duties and Responsibilities.

⁶ As explained above, the County Administrator and the County Public Works Director are considered the same position for purposes of this opinion.

The Chesterfield County Animal Control Director was appointed by the County Administrator, acts under the direction of the County Administrator, and performs other duties as required by the County Administrator. Based upon the information that was provided to this Office, we believe that the position of Animal Control Director is that of an employee rather than a public official. Accordingly, it would not be a violation of the Constitutional prohibition against dual office holding for an individual to serve as both Animal Control Director of Chesterfield County Animal Services and as a police officer with the Town of Chesterfield's Police Department.

CONCLUSION:

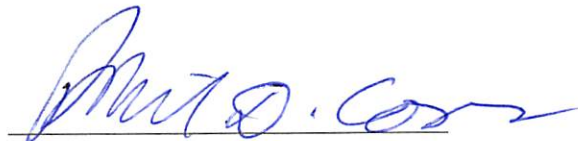
In order to answer your question, our Office must rely on the ordinances and other information that was provided to us, since, to the best of our knowledge, Chesterfield County's Code of Ordinances is not published. Based upon the information that has been provided to us, it is the opinion of this Office that the dual office holding prohibition in Article XVII, Section 1A does not prohibit an individual from serving as both Animal Control Director of Chesterfield County Animal Services and as a police officer with the Town of Chesterfield's Police Department. We believe that the position of Animal Control Director is that of an employee rather than a public official.

Sincerely,



Elinor V. Lister
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General