

1972 WL 25323 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 23, 1972

*1 The Honorable Walter J. Bristow, Jr.
Senator
Richland County
1311 Marion Street
Room 103
Columbia, South Carolina 29201

Dear Senator Bristow:

Your letter of May 16 inquires as follows:

‘Can a member of the Board of Trustees of School District No. of Richland County be employed by County Council as an Assistant County Attorney?’

I have inspected the statutes relating to the powers and authority of the Richland County Council and, specifically, with reference to the employment of the County Attorney. I do not find reference to the creation of the position of Assistant County Attorney therein, except in the portion thereof which recites:

‘[N]o member of the governing body of the County Legislative Delegation, or any partner of any such member, shall be retained as County Attorney or Assistant County Attorney—.

On the other hand, the position of County Attorney is clearly created by the provisions of the organic act.

The previous and frequently reiterated position of this Office with respect to whether an attorney employed by a public body is or is not in officer within the meaning of the dual officeholding provision of the Constitution is that a status of officer is created if provision is made by statute for the position of attorney, but that, in the absence of such statutory creation, the position of attorney for a public entity establishes the relationship of attorney-client, and not that of an officer.

It is my opinion that the position of Assistant County Attorney for Richland County is not an office within the meaning of the dual officeholding provision.

Section 14-3221 provides that no member of the governing body of the County or of the County Legislative Delegation, or any partner of such a member, may be retained as Assistant County Attorney or perform any services as an attorney for any agency which is funded in whole or in part from County funds. If the proposed appointee as Assistant County Attorney is a partner of any member of the governing body or of the County Legislative Delegation, he may not be appointed in that position.

Section 14-3221 further provides that no member of any agency which is funded in whole or in part from county funds may be employed as attorney or do any legal work for such an agency, although a partner of such a member may serve as an Assistant County Attorney.

I am not apprised as to the factual situation concerning the two foregoing provisos and, accordingly, the resolution of these facts must be made before a determination can be made as to whether Section 14-3221 precludes the employment of a specified individual.

This opinion relates only to the question of whether or not the Assistant County Attorney is or is not an Office within the meaning of the dual officeholding provision of the Constitution, and, in my opinion, the position is not such an office.

Very truly yours,

Daniel R. McLeod
Attorney General

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