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The State of South Carolina  
**OFFICE OF THE ATTORNEY GENERAL**

CHARLES MOLONY CONDON  
ATTORNEY GENERAL

August 23, 2000

Ms. Alzena Robinson  
102 Rhoad Park Street  
Bamberg, South Carolina 29003

Dear Ms. Robinson:

Your opinion request has been forwarded to me for reply. You inquire whether the dual office holding prohibitions of the State Constitution would be violated if you were to serve simultaneously as a member of the Bamberg County Election Commission and as a member of Bamberg County Council. You have also asked whether you are required to resign from the election commission when you file as a candidate for Bamberg County Council.

Article XVII, Section 1A of the South Carolina Constitution, provides that "no person may hold two offices of honor or profit at the same time . . .," with exceptions specified for an officer in the militia, a member of a lawfully and regularly organized fire department, constable, or a notary public. As concluded by Attorney General Daniel McLeod in an opinion dated April 26, 1977, "[t]o determine whether a position is an office or not depends upon a number of circumstances and is not subject to any precise formula." The South Carolina Supreme Court, though, has held that for this provision to be contravened, a person concurrently must hold two offices which have duties involving an exercise of some portion of the sovereign power of the State. Sanders v. Belue, 78 S.C. 171, 58 S.E. 762 (1907). "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." Id., 78 S.C. at 174. Other relevant considerations, as identified by the Court, are whether statutes, or other authority, establish the position, prescribe its tenure, duties or salary, or require qualifications or an oath for the position. State v. Crenshaw, 274 S.C. 475, 266 S.E.2d 61 (1980).

*Legal Letter*

Ms. Robinson  
Page 2  
August 23, 2000

This Office has advised on numerous occasions that a member of a county or municipal election commission would be considered an office holder for dual office holding purposes. Ops. Atty. Gen. dated April 21, 1998 and February 23, 1995. We have also advised on numerous occasions that a member of a county council would hold an office for dual office holding purposes. Ops. Atty. Gen. dated July 26, 1999; June 22, 1998; and June 27, 1997. Therefore, if you were to serve simultaneously as a member of the Bamberg County Election Commission and as a member of Bamberg County Council, the dual office holding prohibitions of the State Constitution would be violated. Accordingly, you acknowledge in your request letter that you would have to resign from the election commission if you were to win the seat on County Council; however, you also inquire whether you would have to resign from the election commission when you file as a candidate for Bamberg County Council.

South Carolina Code Ann. § 7-13-75 provides:

***No member of a county or municipal election commission, voter registration board, or combined election and voter registration commission may participate in political management or in a political campaign during the member's term of office.*** No member may make a contribution to a candidate or knowingly attend a fundraiser held for the benefit of a candidate over whose election the member has jurisdiction. ***Violation of this section subjects the member to removal by the Governor or appropriate appointive authority.*** (Emphasis added.)

When interpreting a statute, a court must apply the clear and unambiguous terms of a statute according to their literal meaning. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1991). The words of a statute must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation. Bryant v. City of Columbia, 295 S.C. 408, 368 S.E.2d 899 (1988). The American Heritage Dictionary (3<sup>rd</sup> ed. 1993) defines "participate" as meaning to take part in something or to share in something. See also 31 Words and Phrases 227 (1957). Thus, since it is impossible to run for elective office without *participating* in a political campaign, it appears that § 7-13-75 prohibits you, as a county election commissioner, from being a candidate for Bamberg County Council during your term of office. For this reason, it is my opinion that you would be required to resign your position with the election commission when you file as a candidate for Bamberg County Council.

Ms. Robinson  
Page 3  
August 23, 2000

This letter is an informal opinion only. It has been written by a designated assistant attorney general and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With best personal regards, I am

Sincerely yours,

A handwritten signature in cursive script that reads "Zeb Williams".

Zeb C. Williams, III  
Deputy Attorney General