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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON
ATTORNEY GENERAL

May 24, 2000

William Strachan, City Administrator / Chief of Police
City of Westminster
P.O. Box 399
Westminster, South Carolina 29693

Re: Informal Opinion

Dear Chief Strachan:

By your letter of May 16, 2000, you have asked whether a dual office holding situation would exist if a city police chief were to serve simultaneously as the city administrator.

As you know, 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).

This Office has advised on many occasions that a police officer or police chief would be considered an office holder for dual office holding purposes. *See* Ops. Atty. Gen. dated

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February 4, 1994 and November 2, 1994. Moreover, in Edge v. Town of Cayce, 187 S.C. 171, 197 S.E. 216 (1938), the South Carolina Supreme Court concluded that a chief of police was a public officer. Therefore, having determined that a police chief is an office holder within the meaning of Art. XVII, Sec. 1A, it is necessary, then, to address whether serving as city administrator would likewise constitute an office.

According to the 2000 South Carolina Municipal Association Directory p. 130, the City of Westminster operates under the council form of government as provided for in S.C. Code Ann. §5-11-10 et seq. Section 5-11-40(a) of the Code states, "[t]he council may hire an administrator to assist the council." This Office, in an opinion dated October 18, 1988 (enclosed), observed that "[n]o duties, qualifications, oath, salary, or tenure are provided for by statute and thus are left to the discretion of ... Town Council. Because the Town Council is vested with all legislative and administrative powers needed to operate town government and the determination of policy is vested in council, it would appear that all of the sovereign power is most probably being exercised by council instead of the administrator." For this reason, we concluded that the position of town administrator as contemplated by §5-11-40 is "**most probably not an office** for dual office holding purposes." (Emphasis added.) Accordingly, it is the opinion of this Office that the City of Westminster's arrangement whereby the Chief of Police serves simultaneously as City Administrator does not appear to violate the dual office holding prohibitions of the State Constitution.

I trust this information is responsive to your inquiry and that you will not hesitate to contact me if I can be of additional assistance. This letter is an informal opinion only. It has been written by a designated Deputy Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I am

Sincerely yours,



Zeb C. Williams, III
Deputy Attorney General

ZCW/an
Enclosure