



The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON  
ATTORNEY GENERAL

October 16, 2000

Robert H. Corley, Esquire  
City Attorney  
Post Office Box 651  
Mullins, South Carolina 29574

**Re: Informal Opinion**

Dear Mr. Corley:

By your letter of October 9, 2000, you have asked whether a dual office holding situation would exist if an individual were to serve simultaneously as Mayor of the City of Mullins, Assistant Marion County Coroner and Marion County EMS Director. For the reasons set forth below, it is my opinion that concurrent service as mayor and assistant coroner would violate the South Carolina Constitution's prohibition against dual office holding. However, it would not constitute a dual office holding violation for a mayor to continue serving as the county EMS director.

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

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require qualifications or an oath for the position. State v. Crenshaw, 274 S.C. 475, 266 S.E.2d 61 (1980).

This Office has concluded on numerous occasions that one who serves as the mayor of a municipality would hold an office for dual office holding purposes. See, Ops. Atty. Gen. dated April 9, 1997; November 2, 1994; July 28, 1993 and September 21, 1989. Likewise, this Office has concluded that assistant or deputy county coroners, whether paid or unpaid, are office holders within the meaning of S.C. Const. Art. XVII, Sec. 1A. See, Ops. Atty. Gen. dated June 28, 1995; October 13, 1992; September 13, 1983 and many others. Finally, enclosed for your review is an opinion dated April 20, 1987, which held that a county EMS director would not be considered an officer for dual office holding purposes.

Thus, based upon the reasoning and conclusions of these earlier rulings, it is my opinion that the Mayor of the City of Mullins may not simultaneously serve as the Assistant Marion County Coroner without contravening the dual office holding prohibitions of the State Constitution. The mayor may, however, continue to serve as the Marion County EMS Director. Should he choose to do, it may be prudent to seek guidance from the State Ethics Commission regarding the avoidance of possible conflicts of interest. You may contact the Commission by writing to Mr. Herbert Hayden, Executive Director, State Ethics Commission, 5000 Thurmond Mall, Suite 250, Columbia, SC 29201.

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.

Sincerely yours,



Zeb C. Williams, III  
Deputy Attorney General

ZCW/an  
Enclosure