



The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON  
ATTORNEY GENERAL

March 26, 2001

Mr. Dwight L. Stewart, Jr.  
26 E. Boyce Street  
P.O. Box 126  
Manning, South Carolina 29102

**Re: Informal Opinion**

Dear Mr. Stewart:

By your letter of March 19, 2001, you have asked whether a dual office holding situation would exist if you were to serve simultaneously as Chairman of Clarendon County Council and as a member of the State Board of Registration for Foresters.

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).

Prior Opinions of this Office have consistently concluded that a member of a county council would hold an office for dual office holding purposes. *See, e.g., Ops. Att'y. Gen.* dated July 26, 1999; June 27, 1997 and December 7, 1994. Therefore, it must be determined whether membership on the State Board of Registration for Foresters would likewise constitute an office.

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As you know, S.C. Code Ann. § 48-27-10, *et seq.* created the Foresters Registration Board in order to register and license foresters and to define the practice of forestry. Pursuant to § 48-27-20, board members are appointed and "commissioned by the Governor" for specified terms, and, "before beginning his *term of office*, [the member] shall file with the Secretary of State his written oath or affirmation for the faithful discharge of his official duty." (Emphasis added.) Section 48-27-30 requires members to possess certain qualifications, and § 48-27-40 provides that members "shall receive a per diem allowance when actually attending to the work of the Board . . . and for the time spent in necessary travel . . . ." Moreover, § 48-27-100 authorizes the Board to subpoena witnesses, compel the production books, papers and documents, to administer oaths to witnesses and to compensate such witnesses appearing before the Board in the same manner as "in the court of common pleas in the county in which the Board may sit." Undoubtedly, such powers and responsibilities involve an exercise of the State's sovereignty, and numerous prior opinions of this Office have so held. *See, e.g.*, Ops. Atty. Gen. dated December 22, 1975 (S.C. Board of Dental Examiners held to be an office); and October 18, 1960 (S.C. Board of Chiropractors Examiners held to be an office). Thus, based upon the foregoing, a member of the South Carolina Board of Registration for Foresters must be deemed an office holder for dual office holding purposes. Accordingly, it is my opinion that a dual office holding situation would exist if you were to serve simultaneously as Chairman of Clarendon County Council and as a member of the State Board of Registration for Foresters..

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