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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

April 2, 1998

John G. Frampton, Esquire
Dorchester County Attorney
Post Office Box 430
Summerville, South Carolina 29484

RE: Informal Opinion

Dear Mr. Frampton:

Attorney General Condon has forwarded your recent opinion request to me for reply. You have informed this Office of the following:

A duly elected member of the Summerville Town Council presently serves simultaneously on the Dorchester County Transportation Committee. The Dorchester County Transportation Committee was created pursuant to Section 12-27-400, Code of Laws of South Carolina (1976), as amended. The appointment to that Committee has now devolved to Dorchester County Council. It is my understanding that the Summerville Town Council member was elected to Town Council after his appointment to the Transportation Committee.

You have asked whether the aforementioned would constitute dual office holding in violation of the State Constitution.¹

Article XVII, Section 1A of the State Constitution provides that "no person may hold two offices of honor or profit at the same time ...," with exceptions specified for an

¹ Section 12-27-400 of the Code has since been recodified as Section 12-28-2740 of the Code.

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officer in the militia, member of a lawfully and regularly organized fire department, constable, or notary public. For this provision to be contravened, a person concurrently must hold two public 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). Other relevant considerations are whether statutes, or other such authority, establish the position, prescribe its 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 previously addressed the question of whether membership on a county transportation committee constitutes an office for dual office holding purposes. Ops. Atty. Gen. dated June 19, 1997; July 23, 1996; and July 28, 1993. In these opinions, this Office concluded that although not entirely free from doubt, it appears an individual serving on a county transportation committee would hold an office for dual office holding purposes. In reaching this conclusion, this Office examined the statutory powers of the committee and found that these powers are indicative of an exercise of a portion of the sovereign power of the state. See Op. Atty. Gen. dated July 28, 1993.

This Office has also advised on numerous occasions that a member of a city or town council would be considered an officer for dual office holding purposes. See, as representative of those numerous opinions, Ops. Atty. Gen. dated June 12, 1995; February 4, 1994; July 23, 1993; and July 24, 1991.

Based on the foregoing, if a member of the Dorchester County Transportation Committee were to serve simultaneously on the Summerville Town Council, such service would most likely violate the dual office holding prohibitions of the State Constitution.

When a dual office holding situation occurs, the law operates to automatically "cure" the problem. If an individual holds one office on the date he assumes a second office, assuming both offices fall within the purview of Article XVII, Section 1A of the Constitution (or one of the other applicable constitutional prohibitions against dual office holding), he is deemed by law to have vacated the first office. However, the individual may continue to perform the duties of the previously held office as a de facto officer until a successor is duly selected to assume the duties or complete the term of office. Moreover, actions taken by a de facto officer in relation to the public or third parties will be considered as valid and effectual as those of a de jure officer unless or until a court would declare such acts void or remove the de facto officer from office. Ops. Atty. Gen. dated April 8, 1996 and July 13, 1995.

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

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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 kindest regards, I remain

Very truly yours,

A handwritten signature in cursive script, appearing to read "Paul M. Koch".

Paul M. Koch
Assistant Attorney General