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# The State of South Carolina



## Office of the Attorney General

T. TRAVIS MEDLOCK  
ATTORNEY GENERAL

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August 30, 1993

Ms. Linda C. Dogan  
155 West Centennial Street  
Spartanburg, South Carolina 29303

Dear Ms. Dogan:

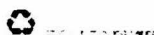
Thank you for your letter of August 18, 1993, to Attorney General Medlock, which he has referred to the Opinion Section for response. You have asked whether there would be a "legal conflict" if you were to become a candidate for Spartanburg City Council while you are simultaneously employed as a Graphics Coordinator for the Spartanburg County Planning Department.

There is no state law which prohibits a state or local governmental employee's candidacy for elective office. We suggest that public employees check with their respective personnel offices to determine whether the agency or political subdivision may have a policy governing the political activity of the affected employees. If for some reason your employment is related to federal funding, we suggest that inquiry be made as to application of the federal Hatch Act; we refer inquirers about the Hatch Act to:

Office of the Special Counsel  
U.S. Merit Systems Protection Board  
1120 Vermont Avenue, N.W.  
Washington, D.C. 20005.

The telephone numbers there are (202) 653-7122 and (202) 653-7143; I understand that the Board has an 800 number, as well. This advice is in keeping with the opinions of our Office dated May 3, 1977 and March 24, 1980, copies of which are enclosed.

If you should be elected to City Council, it would then be necessary to address whether your concurrent county employment as a Graphics Coordinator would constitute dual office holding.



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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 officer in the militia, member of a lawfully and regularly organized fire department, constable, or a 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 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 numerous occasions that one who serves on a city council would hold an office for dual office holding purposes. See, as examples, opinions dated January 8, 1991 (copy enclosed); September 7, 1989; November 20, 1989; and many more. Thus, it must also be determined whether a Graphics Coordinator would be considered an office holder.

You have provided a copy of your official job description. We understand that your position is not one created by statute or ordinance; that no statute or ordinance specifies your job duties or establishes qualifications which must be met by the holder; that you did not take an oath prior to assuming your duties; and that your employment is "at will" rather than for a specific term of years. You do receive compensation, in the form of a salary. Your job description states that a Graphics Coordinator "conducts a variety of duties pertaining to the mapping and graphics activities of the Planning Department ... ." In that capacity you prepare graphic illustrations, make maps, perform field surveys, assist the public and other county departments, and so forth. These duties do not appear to involve an exercise of a portion of the sovereign power of the state.

Considering all of the foregoing factors, we are of the opinion that your position as a Graphics Coordinator for the Spartanburg County Planning Department would be a position of employment rather than an office. For that reason, you would not contravene the dual office holding proscriptions of the state Constitution if you were to be elected to, and serve on, Spartanburg City Council.

We trust that the foregoing is responsive to your inquiry. Please advise if clarification or additional assistance should be needed.

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With kindest regards, I am

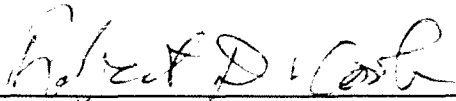
Sincerely,

*Patricia D. Petway*

Patricia D. Petway  
Assistant Attorney General

PDP/an

REVIEWED AND APPROVED BY:



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Robert D. Cook  
Executive Assistant for Opinions