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The State of South Carolina



Office of the Attorney General

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
TELEPHONE: 803-734-3970
FACSIMILE: 803-253-6283

December 20, 1993

Ms. Tammy Rish Kitchens
1055 Rish Drive
Leesville, South Carolina 29070

Dear Ms. Kitchens:

By your letter of December 3, 1993, you have asked whether an individual (yourself) could run for and serve simultaneously on Lexington County Council and as the chief investigator for the Lexington County Defender Agency, Inc. While your letter is phrased in terms of "conflict of interest," I am assuming that your concern is the dual office prohibitions of the State Constitution.

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 county council would hold an office for dual office holding purposes. See Ops. Atty. Gen. dated March 19, 1990 (copy enclosed); January 18, 1991; May 15, 1989; and numerous others.

Apparently this Office has never considered the position of chief investigator of a defender corporation in terms of dual office holding, though on several occasions this Office has opined that a public defender is not considered an office holder for dual office holding purposes. See Ops. Atty. Gen. dated January 7, 1991; June 1, 1987; and July 9, 1986. Based on the reasoning of the cited opinions and two other opinions dated April 5,

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1982 and April 8, 1977, enclosed, we would conclude that employees of a defender corporation would likewise not be considered office holders.

Thus, an individual (yourself) could serve on Lexington County Council and as chief investigator of the Lexington County Defender Agency, Inc., simultaneously, without violating the dual office proscriptions of the State Constitution. I would suggest that you determine whether the agency has a policy concerning political activity of its employees, since this opinion construes only the referenced constitutional question.

As to "conflicts of interest" or actions to be taken by you, should you be elected to council, on certain matters which may come before the council, I would respectfully refer you to the State Ethics Commission for the necessary guidance, as an interpretation of the state's ethics laws will be involved.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/an
Enclosures

REVIEWED AND APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions