

5352 February

The State of South Carolina



Office of the Attorney General

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February 4, 1994

Donald N. Chadwick, Assistant Chief of Police
Blacksburg Police Department
Post Office Box 487
Blacksburg, South Carolina 29702

Dear Mr. Chadwick:

By your letter of January 24, 1994, you have requested the opinion of this Office as to whether a police officer employed in one municipality may run for a seat on a city council in a separate municipality, located in another county, in which he resides. We are of the opinion that dual office holding and other problems would arise if the police officer should be elected to the city council position.

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 a police officer would be considered an office holder for dual office holding purposes. Enclosed is a copy of an opinion dated September 8, 1992, pertaining to police officers as office holders. See also State v. Crenshaw, supra.

Mr. Chadwick
Page 2
February 4, 1994

In addition, this Office has advised previously that a member of a city council would hold an office for dual office holding purposes. Enclosed is a copy of an opinion dated July 23, 1993.

Thus, to serve on a city council and to be employed as a police officer, notwithstanding the fact that each office is held in a separate jurisdiction, a dual office holding situation, in violation of the state Constitution, would be created. An enclosed opinion dated February 10, 1984 explains how dual office holding works. I would add that dual office holding does not preclude one from offering for election; dual office holding would arise only upon one's being elected, sworn into office, and exercising the duties and powers of the office.

At least one other concern is presented by S.C. Code Ann. § 5-7-180, copy enclosed, which has been interpreted by an opinion dated June 19, 1978 (also enclosed). A municipal council member would, according to this statute, be precluded from holding municipal employment elsewhere during his term(s) on council.

I hope that the foregoing and the enclosed opinions will be responsive to your inquiry. Please advise if clarification or additional assistance should be needed.

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