



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

April 5, 1995

Sherron L. Skipper, CMC
City Clerk, City of Hartsville
Post Office Drawer 2497
Hartsville, South Carolina 29551

RE: Informal Opinion

Dear Ms. Skipper:

By your letter of March 31, 1995, to the Office of Attorney General Condon, you have sought an opinion as to whether an individual may serve simultaneously as a member of the Darlington County Public Defender Corporation and as a member of Hartsville City Council without violating the dual office holding provisions of the South Carolina 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 consistently advised that a member of a city council would hold an office for dual office holding purposes. Enclosed is a copy of an opinion of this Office dated February 4, 1994, so concluding.

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This Office has previously advised that a member of the Board of Directors of the Lexington County Public Defender Agency, Inc., would not be considered an officer for dual office holding purposes. Enclosed is a copy of that opinion, which is dated April 5, 1982. In an opinion dated July 9, 1986, in considering whether the Darlington County Public Defender would be considered an office holder, this Office observed that "public defender corporations are not governmental entities but are eleemosynary corporations established pursuant to Section 17-3-60 et seq. of the Code." Assuming that the Darlington County Public Defender Corporation is still established pursuant to S.C. Code Ann. §17-3-60 et seq., a member of its board of directors would not be considered an office holder, in accordance with the previous opinion of this Office.

Based on the foregoing, I am of the opinion that a member of the Board of Directors of the Darlington County Public Defender Corporation may serve simultaneously on the Hartsville City Council without violating the dual office holding prohibitions of the South Carolina Constitution.

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 specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion. I trust that the foregoing has satisfactorily responded to your inquiry and that you will advise if clarification or additional assistance should be needed.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

Enclosures