

The State of South Carolina

Reg. 4845



Office of the Attorney General

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March 14, 1995

William W. Dreyfoos, Esquire  
Attorney for City of Isle of Palms  
180 Meeting Street, Suite 305  
Charleston, South Carolina 29401

RE: Informal Opinion

Dear Mr. Dreyfoos:

By your letter of March 7, 1995, you requested an opinion as to whether an individual may serve simultaneously as both a member of the City of Isle of Palms Planning Commission and a Commissioner of the City's Commission of Public Works without violating the dual office holding prohibitions 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 advised on numerous occasions that one who serves on a municipal planning commission would be considered an office holder for dual office holding

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purposes. See, as examples, Ops. Att'y Gen. dated February 8, 1983 (City of Conway Planning Commission); April 5, 1990 (City of Florence Planning Commission); August 24, 1992 (City of Florence); June 26, 1978 (City of Rock Hill Planning Commission); March 29, 1982 (Town of Lexington); and others. See also S.C. Code Ann. §5-23-420 (appointive members of municipal planning commissions shall hold no other municipal office except that one of the members may be a member of the board of adjustment); §6-7-360 ("No member of a planning commission may hold an elected public office in the municipality or county from which he is appointed. . . ."); and §6-29-350 (B) ("No member of a planning commission may hold an elected public office in the municipality or county from which appointed. . . ."). Thus, I am of the opinion that a member of the Planning Commission of the City of Isle of Palms would be considered an office holder for dual office holding purposes.

This Office has previously examined the position of Commissioner of the Combined Utility System of the City of Easley, by an opinion dated April 12, 1993; the opinion of this Office was that such a position would constitute an office for dual office holding purposes. The Commission examined in that opinion was felt to be a municipal commission of public works established pursuant to Chapter 31 of Title 5, S.C. Code Ann., under which statutory scheme an election for commissioners of public works was provided, six-year terms of office were established, the commissioners were required to take an oath, and powers exercised by the commissioners were specified. Assuming that the Commission of Public Works of the Isle of Palms was established pursuant to this statutory scheme, I am of the opinion that a member or commissioner thereof would be an officer for dual office holding purposes.

Based on the foregoing, I am of the opinion that one who would serve simultaneously as a member of the Planning Commission of the City of Isle of Palms and as a Commissioner of Public Works of the City of Isle of Palms would most probably hold two offices in contravention of 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.

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I trust that this informal opinion satisfactorily resolves your inquiry. Please advise if additional assistance or clarification should be needed.

With kindest regards, I am

Sincerely,

*Patricia D. Petway*

Patricia D. Petway  
Assistant Attorney General