

# The State of South Carolina



## Office of the Attorney General

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March 1, 1995

The Honorable Dave C. Waldrop, Jr.  
Member, House of Representatives  
Post Office Box 813  
Newberry, South Carolina 29108

RE: Informal Opinion

Dear Representative Waldrop:

Thank you for your telephone call to Attorney General Condon's Office requesting our opinion as to whether an individual may serve as a city council member and on a County Transportation Committee at the same time without contravening 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 previously advised, by an opinion dated July 28, 1993, that while the question is not entirely free from doubt, it appears that an individual who serves on a County Transportation Committee would hold an office for dual office holding purposes. A copy of that opinion is enclosed herewith.

The Honorable Dave C. Waldrop, Jr.

Page 2

March 1, 1995

This Office has advised on numerous occasions that a member of a city council would hold an office for dual office holding purposes. Enclosed is a copy of an opinion dated February 4, 1994, as representative of those numerous opinions.

Based on the foregoing, I am of the opinion that a person who would serve as a city council member and as a member of a County Transportation Committee would most probably hold two offices in contravention of the State Constitution.

I trust that the foregoing will be responsive to your inquiry. If we may be of further assistance, please advise.

With kindest regards, I am

Sincerely,



Patricia D. Petway  
Assistant Attorney General

Enclosures