



The State of South Carolina  
**OFFICE OF THE ATTORNEY GENERAL**

CHARLES MOLONY CONDON  
 ATTORNEY GENERAL

March 20, 1995

The Honorable Catherine C. Christophillis  
 Member, Greenville City Council  
 1615 Wade Hampton Boulevard  
 Greenville, South Carolina 29609-5049

Dear Ms. Christophillis:

By your letter of March 15, 1995, you have inquired whether an elected member of Greenville City Council could also serve as the Director of the Insurance Fraud Division of the South Carolina Attorney General's Office. While the answer is not entirely free from doubt, for the reasons set forth below, it is the opinion of this Office that holding these two positions simultaneously would most probably contravene the dual office holding prohibitions of the state Constitution.

Article XVII, Section 1A of the South Carolina 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 violated, a person concurrently must hold two public offices which have duties involving an exercise of some 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 concluded on numerous occasions that a member of a city council would be regarded as occupying an office for the purposes of Article XVII, Section 1A of the state Constitution. See Ops. Atty. Gen. dated July 23, 1993 (as to Charleston City Council, enclosed); January 8, 1991; September 7, 1989; and many others. Thus, the only remaining issue is whether the Director of the Attorney General's Insurance Fraud Division would be considered an office holder for dual office holding purposes.

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The Insurance Fraud Division of the Attorney General's Office was created pursuant to Act No. 497 of 1994, Part II, Section 31, which amended Chapter 55 of Title 38 of the 1976 Code by adding Article 5. Among the new code sections added, Section 38-55-560(A) provides, "[t]here is established in office of the Attorney General a division to be known as the Insurance Fraud Division, which must prosecute violations of Sections 38-55-170 and 38-55-540 and related criminal insurance activity." (emphasis added). In an opinion dated February 22, 1982, former South Carolina Attorney General Daniel R. McLeod noted, "[w]hether one acts as a prosecutor in a case which is tried before a jury or whether one represents the State in receiving a plea of guilty, undoubtedly there is an exercise of a portion of the sovereignty of the State ...." (emphasis added). In addition to these prosecutorial duties, new Code Section 38-55-590 mandates both the frequency and content of periodic reports which the Director of the Insurance Fraud Division must make to the General Assembly. Finally, it should be noted that the Director of the Insurance Fraud Division will most likely receive the title Assistant Attorney General. The Attorney General, a constitutional officer, appoints the Assistant Attorneys General pursuant to Section 1-7-30. While the statute does not require an Assistant Attorney to take an oath and no tenure is specified, the annual Appropriations Act provides for compensation for the Assistant Attorneys General. Therefore, since the Director of the Insurance Fraud Division would unquestionably exercise a portion of the sovereign powers of the State, and because statutes prescribe the position's duties and salary, it is the opinion of this Office that the Director of Insurance Fraud Division would be deemed to be holding an office.

Accordingly, it must be concluded that one who would serve simultaneously on Greenville City Council and as the Director of the Insurance Fraud Division of the Attorney General's Office would most probably hold dual offices in contravention of Article XVII, Section 1A of the South Carolina Constitution. I trust the foregoing is responsive to your inquiry. If there are additional questions, please advise.

Very truly yours,



Zeb C. Williams, III  
Deputy Attorney General

ZCW,III/an  
Enclosure