



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

March 27, 1995

Thomas O. Sanders, IV, Esquire
501 Pelham Drive, Apartment E-202
Columbia, South Carolina 29209

RE: Informal Opinion

Dear Mr. Sanders:

By your letter of March 13, 1995, to Attorney General Condon, you asked whether S.C. Const. art. III, §24 would prohibit as assistant solicitor of any county from seeking a seat in the General Assembly. You point out in your letter that while assistant solicitors are county employees, they do represent the State of South Carolina in all cases. You asked whether an assistant solicitor position would be considered to be a position of "profit or trust under this State?"

The thrust of art. III, §24, is dual office holding. Similar prohibitions are also found in art. XVII, §1A and art. VI, §3. This Office has opined on several occasions that a member of the General Assembly would be considered an office holder for dual office holding purposes. See, as examples, Ops. Att'y Gen. dated September 4, 1992 (member of the House of Representatives would be considered an office holder) and January 11, 1991 (member of the Senate would be considered an office holder). Likewise, this Office has previously opined that an assistant solicitor or a special prosecutor in a solicitor's office would be an office holder for dual office holding purposes. Enclosed please find copies of Ops. Att'y Gen. dated June 11, 1993; October 19, 1990; and February 22, 1982, so concluding. The opinion of February 22, 1982, concludes that a special prosecutor in the Fifth Judicial Circuit who also served as a member of the House of Representatives would be holding dual offices; this opinion is closest to the situation which you have presented.

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The dual office holding prohibitions of the State Constitution do not prohibit an individual presently holding an office from offering for a second office. The prohibitions take effect only when an individual would attempt to hold two offices simultaneously. I am not aware of any provision of state law which would preclude an assistant solicitor from offering for election to the General Assembly. Because assistant solicitors are usually considered county employees, it would be wise to check with your county personnel office or the county attorney to determine whether there are any personnel policies or regulations which would affect one's candidacy under these circumstances.

Another consideration is art. III, §11 of the State Constitution, which provides that "[e]ach house shall judge of the election returns and qualifications of its own members..." Any issue as to dual office holding which would affect a member of the General Assembly would be resolved by the House of which the affected person is a member. See Culbertson v. Blatt, 194 S.C. 105, 9 S.E.2d 218 (1940). You may wish to consider consulting with the appropriate House in the General Assembly to ascertain the views of its members as to the question you have raised.

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 you will find it 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

Enclosures