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The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON  
ATTORNEY GENERAL

May 16, 1995

Melvin B. McKeown, Jr., Esquire  
York County Attorney  
Post Office Drawer 299  
York, South Carolina 29745

RE: Informal Opinion

Dear Mr. McKeown:

By your letter of May 8, 1995, to Attorney General Condon, you have sought an opinion as to the following question:

Does the appointment by a county legislative delegation of a county council to serve as the County Transportation Committee under the provisions of S.C. Code Ann. §12-27-400, as amended, violate any constitutional or statutory provision or common law principle?

In particular, you have referenced previous opinions of this Office which considered the issue of dual office holding and concluded that while it was not entirely free from doubt, members of a county transportation committee would hold an office for dual office holding purposes.

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

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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 members of county councils would be considered office holders for purposes of dual office holding. See, as examples of the numerous opinions, Ops. Att'y Gen. dated May 15, 1989; December 7, 1994; December 20, 1993; and many others.

Similarly, this Office has opined on several occasions concerning members of county transportation committees in the context of dual office holding. In an opinion dated July 28, 1993, it was concluded that

while it is not entirely free from doubt, it appears that one who would serve on a County Transportation Committee would hold an office for dual office holding purposes. Thus, if a mayor or city or county council member were to serve simultaneously on a County Transportation Committee, that individual would most probably violate the dual office prohibitions of the state Constitution.

By an opinion of this Office dated January 25, 1994, this Office opined that

if a member of the Florence County Tax Appeal Board or a member of the Florence County Convention & Visitors Bureau were to be appointed to the County Transportation Committee, dual office holding situations would most probably result.

Then, by an opinion dated March 3, 1994, this Office further opined that "should members of a county planning commission be appointed as that county's county transportation committee, a dual office holding situation would most probably result."

Based on the foregoing, I am of the opinion that the relevant law has not changed since these opinions were rendered. I remain of the opinion that if county council members were to serve on or as a county's transportation committee, pursuant to S.C. Code Ann. §12-27-400, a dual office holding situation would most probably result.

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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With kindest regards, I am

Sincerely,

*Patricia D. Petway*

Patricia D. Petway  
Assistant Attorney General