

5043 Luberay

# The State of South Carolina



## Office of the Attorney General

T. TRAVIS MEDLOCK  
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING  
POST OFFICE BOX 11549  
COLUMBIA, S.C. 29211  
TELEPHONE: 803-734-3970  
FACSIMILE: 803-253-6283

February 8, 1993

Mr. Jimmy L. Green  
Director of Business Management  
North Charleston Sewer District  
1058 Renwood Drive  
James Island, South Carolina 29412

Dear Mr. Green:

By your letter of January 15, 1993, you sought the opinion of this Office as to whether your employment as Director of Business Management with the North Charleston Sewer District would create a dual office holding situation if you were to be elected to the Town Council of the newly-incorporated Town of James Island.

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 council would hold an office for dual office holding purposes. See, as examples, opinions dated September 7, 1989 and January 8, 1991 (copies enclosed); November 20, 1989; August 14, 1992; and many more. Because service on a municipal council would constitute an office, it must be determined whether your position with the North Charleston Sewer District would constitute an office.

REQUEST LETTER

Mr. Green  
Page 2  
February 8, 1993

The North Charleston Sewer District was recreated by Act No. 1768 of 1972, as amended. Section 7(17) of that act empowers the governing body of the District to appoint employees, to prescribe their duties, and to fix their compensation, among other things. Neither this act nor others which I was able to locate concerning the District expressly created the position of Director of Business Management (or Business Manager) of the District. No statute or act prescribes duties for that position, specifies tenure of the incumbent, prescribes an oath, or establishes qualifications.

You advise that you hold your position basically at the will of the governing body or your supervisor, rather than for a set term of years. You have not taken an oath. You receive compensation in the form of a salary and benefits. You have provided a copy of your job description which summarizes your responsibilities: "Under limited supervision, performs general duties to create and maintain fiscal records; reviews and analyzes financial transactions, reports findings for internal and external distribution; directs and coordinates activities of specialized billing, Customer Service, and disaster preparedness; prepares management studies, performs management analysis and special assignments, as designated." A review of the more specific position responsibilities does not show any which appear to involve the exercise of a portion of the sovereign power of the State.

Considering the foregoing, it is our opinion that the position of Business Manager of the North Charleston Sewer District would be considered one of employment rather than an office. Thus, as Business Manager of the North Charleston Sewer District, you would most probably not violate the dual office holding proscriptions of the state Constitution if you should be elected to and serve on the municipal council for the Town of James Island.

During a telephone conversation, you inquired additionally about whether your service as a trustee for the firemen's insurance and inspection fund, on behalf of the James Island Fire Department, would be a dual office holding problem should you be elected to the municipal council. By an opinion dated April 20, 1982 (copy enclosed), this Office opined that one who would serve as such a trustee would hold an office for dual office holding purposes. Thus, serving simultaneously as a trustee of a firemen's insurance and inspection fund and as a member of a municipal council would most probably constitute dual office holding.

I trust that the foregoing has satisfactorily responded to your inquiries. Please advise if clarification or additional assistance should be needed.

Mr. Green  
Page 3  
February 8, 1993

With kindest regards, I am

Sincerely,

*Patricia D. Petway*

Patricia D. Petway  
Assistant Attorney General

PDP/an  
Enclosures

REVIEWED AND APPROVED BY:

*Robert D. Cook*

Robert D. Cook  
Executive Assistant for Opinions