



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
 ATTORNEY GENERAL

June 27, 1997

Thomas O. Sanders, IV, Esquire
 Charleston County Solicitor's Office
 19 Lyttleton Avenue
 Charleston, South Carolina 29407

Re: Informal Opinion

Dear Mr. Sanders:

Your opinion request has been forwarded to me for reply. First, you ask whether serving simultaneously as an Assistant United States Attorney and as a member of city or county council or member of the General Assembly would violate the dual office holding prohibitions of the State Constitution. Second, you ask whether the dual office prohibitions of the State Constitution would be violated by serving simultaneously as a city prosecutor and as a member of city or county council or member of the General Assembly.

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 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 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 dual office holding purposes. Ops. Atty. Gen. dated May 16, 1995, December 7, 1994, December 20, 1993, and May 15, 1989. This

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Office has also previously opined that members of a city council would be considered office holders for dual office holding purposes. Ops. Atty. Gen. dated February 4, 1994 and July 23, 1993. In addition, this Office has previously advised that a city prosecutor would be considered an office holder for dual office holding purposes. Op. Atty. Gen. dated May 3, 1982.

With regards to members of the General Assembly, this Office has advised that members would be considered office holders for dual office holding purposes. Ops. Atty. Gen. dated May 27, 1995, September 4, 1992 and January 11, 1991. I would note that you must also consider Article III, Section 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. Id.

Numerous opinions have been issued by this Office in past years considering whether offices or positions required by or otherwise established under federal law would be considered offices for purposes of the state constitutional prohibition against dual office holding. Each of those opinions has concluded that a position established pursuant to federal law would not be considered an office for purposes of the state constitutional prohibition found in Article XVII, Section 1A. See, as examples, opinions dated July 23, 1987 (part-time federal magistrate); March 21, 1979 and February 8, 1965 (postmaster); June 21, 1993 (United States Marshal); September 15, 1982 (special federal prosecutor); March 11, 1982 (State Environmental Quality Control Advisory Committee); June 8, 1977 (unspecified federal office); November 20, 1975 (South Carolina Developmental Disabilities Council); December 27, 1966 and September 11, 1964 (selective service boards); November 21, 1960 (United States Commissioner); and August 19, 1960 (Agricultural Stabilization and Conservation Commission). See also Op. Atty. Gen. dated September 15, 1982. I discern no reason to treat an Assistant United States Attorney any differently from the way federal positions have been treated in past years. I note that it would be wise to check with the federal agency in question to determine their rules on the subject and to determine whether the Hatch Act is applicable.

Based on the foregoing, serving simultaneously as an Assistant United States Attorney and as a member of city or county council or the General Assembly would not violate the dual office prohibitions of the State Constitution. However, I would recommend getting the federal perspective on this matter. Secondly, serving simultaneously as a city prosecutor and as a member of city or county council or member of the General Assembly would violate the dual office holding prohibitions of the State

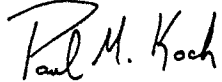
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Constitution. Of course, with regards to the General Assembly, the House of which the affected person is a member would be the final judge of the qualifications of the member.

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.

With kindest regards, I remain

Very truly yours,



Paul M. Koch

Assistant Attorney General