

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

March 19, 1990

Mr. Gordon W. Eckley
301 Harris Street
Bishopville, South Carolina 29010

Dear Mr. Eckley:

By your letter of February 22, 1990, you have requested the opinion of this Office as to whether you might serve on a county council concurrently with your employment by the South Carolina Public Service Commission as a railroad track inspector, without violating the dual office holding prohibitions of the State Constitution.

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).

Membership on a county council has been deemed an office by numerous prior opinions of this Office. See Op. Atty. Gen. dated July 9, 1986 (copy enclosed) as representative of the numerous opinions.

This Office has apparently never opined on the position you hold with the Public Service Commission; you have furnished a position description for our review. It is noted that no statute creates your position or specifies duties or qualifications to be met

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by the incumbent. No oath is required of the incumbent. Tenure is at the will of the employer and employee, rather than for a specified term of years. Compensation is paid, in the form of a salary. As we understand your duties, you are responsible for monitoring the railroads in this State, inspecting track and so forth to make certain that federal railroad standards are met, and reporting results of inspections to the federal government. It does not appear that your position involves an exercise of a portion of the sovereign power of the State.

Based on the foregoing, the position which you hold with the South Carolina Public Service Commission most probably would be considered a position of employment rather an office. For that reason, there would not be a dual office holding problem if you were to serve concurrently on a county council.

While no state law or constitutional provision would be violated by your service, we call your attention to two other considerations. First, if your position has any involvement with federal funds, you might be subject to the terms of the federal Hatch Act. You might wish to clear your anticipated political activity with the U.S. Merit Systems Protection Board if that be the case. Second, you may wish to inquire of your personnel office at your agency to determine whether your agency has any rule or regulation which would govern political activity of its employees.

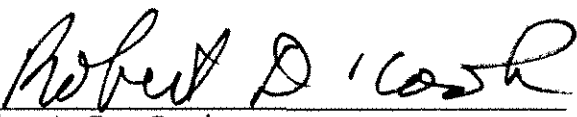
With kindest regards, I am

Sincerely,

Patricia D. Petway
Patricia D. Petway
Assistant Attorney General

PDP/nw
Enclosure

REVIEWED AND APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions