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The State of South Carolina



Office of the Attorney General

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October 13, 1992

John D. Smith, Administrator
Town of Andrews
Post Office Box 378
Andrews, South Carolina 29510

Dear Mr. Smith:

By your letter of September 29, 1992, you have advised that you are Town Administrator in the Town of Andrews. You have asked whether you could serve concurrently as Town Administrator and as a Deputy Coroner for Georgetown County 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).

This Office has previously concluded that one who serves as a deputy coroner would hold an office for dual office holding purposes. See, for examples, Ops. Atty. Gen. dated November 10, 1983 (copy enclosed); September 2, 1983; July 15, 1982; April 20, 1982; and others. Thus, it must be determined whether your position as Town Administrator would constitute an office.

You have advised that the Town of Andrews operates under the "strong mayor" form of government, or under S.C. Code Ann. § 5-9-10 et seq. Section 5-9-40 provides: "The mayor and council may employ an administrator to assist the mayor in his office." No

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statute of which we are aware establishes qualifications to be met or duties to be exercised by such an administrator. You advised that you did not take an oath of office and further that you serve at the pleasure of the Mayor and Town Council. You are compensated for your work. Your position as Town Administrator appears to be one of employment rather than an office, as most of the factors usually found in an office are lacking here.

Based on the foregoing, it is the opinion of this Office that you could serve concurrently as Town Administrator for the Town of Andrews and as a deputy coroner without violating the dual office holding prohibitions of the state Constitution.

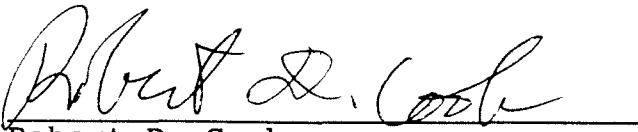
With kindest regards, I am

Sincerely,

Patricia D. Petway
Patricia D. Petway
Assistant Attorney General

PDP/an
Enclosure

REVIEWED AND APPROVED BY:


Robert D. Cook
Executive Assistant for Opinions