

The State of South Carolina



Office of the Attorney General

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April 16, 1991

John C. Zilinsky, Esquire
Assistant County Attorney
Post Office Box 1236
Conway, South Carolina 29526

Dear Mr. Zilinsky:

By your letter of March 7, 1991, you have asked for the opinion of this Office as to whether an employee of the Horry County Register of Mesne Conveyances office may be appointed to and serve on the Horry County Zoning Board of Adjustments, in light of the proscription of § 6-7-740, S.C. Code Ann. (1976). In a well-supported memorandum you concluded that an employee of the RMC office would be ineligible to serve on the Zoning Board of Adjustment; we concur with your conclusion.

Section 6-7-740, which authorizes the creation, membership, and powers of zoning boards of appeals or adjustment, provides in relevant part that "None of the members may hold any other public office or position in the municipality or county." This Office advised previously that the act of the General Assembly of which § 6-7-740 is a part, appears to be an adaptation of the Standard State Zoning Enabling Act which has been adopted in many jurisdictions. Op. Atty. Gen. dated March 15, 1990. Despite its widespread adoption, we were unable to locate judicial decisions or opinions of other attorneys general which construed the language of § 6-7-740 as to what constitutes a position. Thus, we must use the plain and ordinary definition of the term "position" as you did in your memorandum. Worthington v. Belcher, 274 S.C. 366, 264 S.E.2d 148 (1980).

The concept of a public "position" seems to connote public employment, at the very least. See cases cited in your memorandum; also McDonald v. City of Newark, 55 N.J.L. (26 Vroom) 267, 26 A. 82 (1893); State ex rel. Hooper v. Hahn, 69 S.D. 275, 9 N.W.2d 502 (1943) (an office is a public position, though not all

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public positions are offices). To interpret "position" as meaning "office" in § 6-7-740 would create an absurd redundancy; such as interpretation should be avoided if possible. State ex rel. McLeod v. Montgomery, 244 S.C. 308, 136 S.E.2d 778 (1964). In our view, the General Assembly must have intended to disqualify two different categories of individuals from service on zoning boards of appeals or adjustments: county or municipal officers and employees.

For the foregoing reasons, we believe that an individual employed in the Horry County Register of Mesne Conveyances office would be considered to hold a public position in Horry County and would thus be disqualified from serving on the Horry County Zoning Board of Adjustment by virtue of the prohibition expressed in § 6-7-740. We so concur with the opinion expressed in your letter of March 7, 1991.

With kindest regards, I am


Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/an

REVIEWED AND APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions

cc: Edgar L. Dyer, III, Esquire