



Office of the Attorney General

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September 24, 1990

O. Lee Sturkey, Esquire
McCormick Town Attorney
Post Office Box 306
McCormick, South Carolina 29835

Dear Mr. Sturkey:

You have asked for the opinion of this Office as to whether an individual may serve concurrently on the Commission of Public Works of the Town of McCormick and as a maintenance supervisor with the South Carolina Department of Corrections without contravening 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).

By an opinion dated May 2, 1974, this Office advised that a commissioner of public works would hold an office for dual office holding purposes. A copy of that opinion is enclosed herewith.

The other position in question is that of the maintenance supervisor at a facility of the South Carolina Department of Corrections. This position was not created by a statute, nor does any statute specify qualifications for the position-holder or provide for his duties. No tenure of the individual is specified, as in a

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specific term of years. Compensation is provided in the form of salary and fringe benefits, as for any state employee. No oath is required to be taken prior to the exercise of the duties of the position.

You have provided a position description for the individual in question. A review of this document shows that the individual is to plan, coordinate, schedule, and inspect all work accomplished by the maintenance staff of the correctional facility. The eleven listed tasks all relate to maintenance and related duties. While the maintenance supervisor will have some inmate contact, we understand that he does not have the law enforcement certification which corrections officers must obtain, though he has had some law enforcement training.

Based on the foregoing, it is the opinion of this Office that serving as the maintenance supervisor of a corrections facility would most probably not be considered an office holder for dual office holding purposes. Cf., Op. Atty. Gen. dated August 29, 1990 (copy enclosed). Therefore, that individual could most probably serve as a commissioner of public works for the Town of McCormick.

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