

The State of South Carolina



Office of the Attorney General

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February 18, 1986

Mitch Manis, Member
Pine Ridge Town Council
1522 Fish Hatchery Road
West Columbia, South Carolina 29169

Dear Mr. Manis:

You have asked whether you might serve on the Town Council of Pine Ridge and, at the same time, be a commissioned wildlife or conservation officer for the South Carolina Wildlife and Marine Resources Department without violating dual office holding prohibitions in the State Constitution.

Article XVII, § 1A of the South Carolina Constitution provides that "... no person shall hold two offices of honor or profit at the same time." 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 issued numerous opinions on members of town or city councils being officers for dual office holding purposes. Enclosed is an opinion so holding, dated January 31, 1984, as an example. The position of Deputy Wildlife Officer has been determined to be an officer by opinions dated August 1, 1979 and September 27, 1982, enclosed. Game wardens, or conservation officers, were determined to be officers by an opinion dated February 11, 1986. Thus, holding a commission as a Deputy Wildlife Officer or as a Game Warden or conservation officer and serving on a town council would most likely be deemed by the courts of this State to be a situation of dual office holding.

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You advised that you were elected to serve on Pine Ridge Town Council in 1980. A few years later you were commissioned a Deputy Wildlife Officer by the Wildlife Department. You were re-elected to serve on Town Council last year. Finally, you advised that you have recently completed additional training so that you may be fully commissioned by the Wildlife Department. At present, as I explained, you are an officer de jure as to council and an officer de facto as to the Wildlife Department. If you accept the commission, you would become an officer de jure as to the wildlife commission and an officer de facto as to council.

The concepts of de jure and de facto officers are explained in an opinion dated February 10, 1984, enclosed. Basically, when an officer accepts a second office, he vacates the first office but continues to serve as a de facto officer until the vacancy is filled. As an officer de facto, any action you may have taken as to the public or third parties would be as valid and effectual as those actions taken by an officer de jure unless or until a court should declare those acts invalid or remove you from office.

If you should have further questions after you have read the enclosed opinions, please feel free to call me.

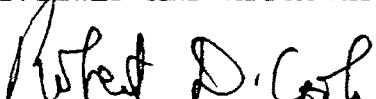
Sincerely,

Patricia D. Petway
Patricia D. Petway
Assistant Attorney General

PDP/an

Enclosures

REVIEWED AND APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions

cc: Buford Mabry, Esquire
South Carolina Wildlife and
Marine Resources Department