

The State of South Carolina



Office of the Attorney General

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January 28, 1986

Ms. Peggy Whitman
Personnel Director, Aiken County
828 Richland Avenue, West
Aiken, South Carolina 29801

Dear Ms. Whitman:

By your letter of January 24, 1986, you have asked whether you may offer for election to and serve on the New Ellenton Town Council while you are employed as Personnel Director for Aiken County.

We have advised on several occasions that there is no statutory or constitutional prohibition against a public employee offering for election for public office. Ops. Atty. Gen. dated November 2, 1978; December 5, 1979; and August 24, 1982, copies of which are enclosed. You should determine whether Aiken County has a policy regarding political activity of its employees, however. In addition, if your position involves federal funds and you contemplate partisan political activity, the federal Hatch Act must be considered. You may consult with Office of the Special Counsel, U. S. Merit Systems Protection Board, 1120 Vermont Avenue NW, Washington, D.C. 20419 for a ruling or more information; the telephone number is (202) 653-7188. A copy of the Hatch Act is enclosed.

You have also asked whether, if elected, you may serve in both positions. 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).

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This Office has held on numerous occasions that one who serves on a city or town council holds an office for dual office holding purposes. A representative opinion dated January 31, 1984, is enclosed herewith.

We have apparently never considered whether the Personnel Director for Aiken County would be an officer or merely a county employee. You have advised that the position is included within job descriptions outlined in the county code adopted by Aiken County Council. You are employed by and answer to the county administrator and are paid a salary. Your duties include those related to personnel and compensation of county employees. You are employed at the will of the county administrator and did not take an oath upon assuming your duties. With regard to this position, the following from Sanders v. Belue, supra, is relevant:

[O]ne who merely performs the duties required of him by persons employing him under an express contract or otherwise, though such persons be themselves public officers, and though the employment be in or about a public work or business, is a mere employee.

78 S.C. at 174.

Thus, if you were to be elected to the New Ellenton Town Council, the prohibition against dual office holding would not appear to be violated if you continue to serve as Personnel Director for Aiken County.

We trust that the foregoing has satisfactorily responded to your inquiry. Please advise if we may provide additional information or clarification.

Sincerely,

Patricia D. Petway
Patricia D. Petway
Assistant Attorney General

PDP/an
Enclosures

REVIEWED AND APPROVED BY:

Robert D. Cook

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Executive Assistant for Opinions