

The State of South Carolina



Office of the Attorney General

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July 9, 1986

Robert L. Kilgo, Jr., Esquire
Chairman, Darlington County Council
Post Office Box 581
Darlington, South Carolina 29532

Dear Mr. Kilgo:

Referencing the dual office holding prohibitions of the State Constitution, you have asked for the opinion of this Office as to whether a member of a county council may serve as a public defender in the same county. You have advised that Darlington County Council provides a portion of the funding for the Darlington County Public Defender Corporation but otherwise Council has no control over the Corporation; further, the funds are paid directly to the Corporation and not to its personnel.

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 advised on numerous occasions that a member of a county council holds an office for dual office holding purposes. See, for example, Opinion No. 83-90, dated November 15, 1983, and No. 4176, dated November 7, 1975, copies of which are enclosed.

Similarly, we have also advised on numerous occasions that a public defender employed by a public defender corporation does not hold an office for dual office holding purposes. See

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discussions in Ops. Atty. Gen. dated April 5, 1982; November 14, 1979; and April 20, 1979, copies of which are enclosed. Thus, one who would serve as a member of a county council and as a public defender would not contravene the dual office holding prohibitions of the State Constitution.

Section 4-9-100, Code of Laws of South Carolina (1976, as revised), prohibits council members' holding other offices of honor or profit in government during their elected terms. It must be noted that public defender corporations are not governmental entities but are eleemosynary corporations established pursuant to Section 17-3-60 et seq. of the Code. As noted in the opinion dated April 5, 1982, a public defender "does not act on the state's behalf or in concert with it." Thus, a county council member would not contravene Section 4-9-100 by serving as a public defender.

Certain precautions would be advisable for a county council member contemplating employment as a public defender. Section 8-13-460 of the Code, a portion of the State Ethics Act, contains certain requirements which must be followed since the Public Defender Corporation receives funds from Darlington County Council; for more detailed advice as to requirements under the Ethics Act, you may wish to consult the State Ethics Commission (1122 Lady Street, Suite 930, Columbia 29201 or 734-1227). You may wish to determine whether the Corporation has regulations about the political activity of its employees, as well. Finally, you may wish to seek an advisory opinion from the Bar's Ethics Advisory Committee to consider whether the Code of Professional Responsibility would have any effect on holding both positions.

We trust that the foregoing has satisfactorily responded to your inquiry. Please advise if additional assistance should be necessary.

Sincerely,

Patricia D. Petway
Patricia D. Petway
Assistant Attorney General

PDP/an
Enclosures

REVIEWED AND APPROVED BY:

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