

# The State of South Carolina



## Office of the Attorney General

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June 19, 1987

The Honorable James L. Solomon, Jr.  
Commissioner, South Carolina  
Department of Social Services  
Post Office Box 1520  
Columbia, South Carolina 29202-1520

Dear Commissioner Solomon:

By your letter of May 29, 1987, you have asked for the opinion of this Office as to any possible dual office holding or conflict of interest which might result if one individual should be employed as the chief staff attorney in the Florence Child Support office of the Department of Social Services while also serving as a part-time magistrate.

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 concluded on numerous occasions that an individual who serves as a magistrate would hold an office for

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dual office holding purposes. See for example, Ops. Atty. Gen. dated February 20, 1980 and September 23, 1980, copies of which are enclosed.

The position of chief staff attorney of a regional child support office of the Department of Social Services has apparently not been considered in terms of dual office holding previously. It must be noted that no statute creates the position, states qualifications, or specifies the duties of the holder of the position. Tenure is at will rather than for a specific term of years. The individual is paid a salary. Certain statutes specify the obligations of the Department of Social Services, as assignee, to enforce child support obligations, but these statutes do not specifically detail the duties of the individual in question. The individual appears to be an attorney for a public entity, in an attorney-client relationship, rather than an officer. The following from Sanders v. Belue is apposite:

[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.

Id., 78 S.C. at 174. Thus, one who would serve as the chief staff attorney in a regional child support office of the Department of Social Services would be considered an employee rather than a public officer. See Op. Atty Gen. dated February 20, 1980, enclosed (General Counsel for the Department of Health and Environmental Control not an officer).

Based on the foregoing, it is the opinion of this Office that one who serves as the Chief Staff Attorney in the Florence Child Support office of the Department of Social Services may also serve as a part-time magistrate without running afoul of the dual office holding prohibitions of the State Constitution. The individual in question may wish to consult the Ethics Advisory Committee of the South Carolina Bar or the Advisory Committee on Standards of Judicial Conduct to make certain that no provisions of the Code of Professional Responsibility or Code of Judicial Conduct would be contravened.

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We trust that the foregoing has satisfactorily responded to your inquiry. If you have additional questions or need clarification, please advise.

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*

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