

The State of South Carolina



Office of the Attorney General

2790
Library

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
TELEPHONE 803-734-3970

June 1, 1987

The Honorable Marion P. Carnell
Member, House of Representatives
518C Blatt Building
Columbia, South Carolina 29211

Dear Representative Carnell:

By your letter of May 12, 1987, with its enclosure, you have asked that this Office render its opinion on the following two questions:

1. May the same person simultaneously hold the position of County Attorney for Abbeville County and act as Public Defender for the Defender Corporation of Greenwood-Abbeville Counties?
2. May the same person simultaneously hold a position on the Greenwood County Airport Commission and act as City Attorney for the City of Greenwood?

Each of your questions involve the constitutional prohibition against dual office holding.

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).

As to your first inquiry, there is no dual office holding problem with respect to one who would hold the position of County Attorney for Abbeville County and Public Defender for the Defender Corporation of Greenwood-Abbeville Counties. A public

The Honorable Marion P. Carnell
Page 2
June 1, 1987

defender is not viewed to be an office holder. See Op. Atty. Gen. dated July 9, 1986. A county attorney has been viewed sometimes as holding an office and sometimes not holding an office. See Ops. Atty. Gen. dated July 13, 1981 and January 17, 1985. The opinion of July 13, 1981 in particular explains the criteria which are examined to make the determination as to a county attorney being an office holder or not. However, in this instance, such is not necessary since a public defender is not deemed to be an office holder. Thus, the same individual may serve as County Attorney for Abbeville County and also act as Public Defender for the Defender Corporation of Greenwood-Abbeville Counties without running afoul of the constitutional prohibitions against dual office holding.

With regard to your second question, I note that the Greenwood County Airport Commission legislation adopted earlier by the General Assembly was repealed by Act No. 725 of 1976. Before any determination may be made as to your second question, it will be necessary to review whatever ordinance or document established the Greenwood County Airport Commission as it exists today. It would be most helpful if you could obtain this information for us, since no opinion could be undertaken without examining the enabling legislation.

We trust that we have adequately responded to your first inquiry. We look forward hearing from you as to the enabling legislation of the Greenwood County Airport Commission at your convenience. Copies of the cited opinions are enclosed for your use.

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