

The State of South Carolina



Office of the Attorney General

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April 29, 1985

The Honorable Ralph Wilson
Member, Conway City Council
Post Office Box 1827
Conway, South Carolina 29526

Dear Mr. Wilson:

You have advised this Office that you were recently elected to the Conway City Council and that you have served for approximately eighteen (18) months on the Horry County Airport Commission, a position which you continue to hold. You have asked whether your holding both positions simultaneously might violate the dual office holding provisions of 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 concluded on numerous occasions that one who serves on a city council holds an office for dual office holding purposes. See Ops. Atty. Gen. dated January 31, 1984 (enclosed); July 8, 1982; September 7, 1982; June 18, 1982; and many others.

Similarly, this Office has determined on at least three occasions that one who serves on a county airport commission would hold an office for dual office holding purposes. See Ops. Atty. Gen. dated March 19, 1975; January 19, 1983; and November 9, 1982 (copies enclosed).

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The Horry County Airport Commission was created by act of the General Assembly in 1947. By Act No. 1096, 1974 Acts and Joint Resolutions, the original legislation was amended to provide, inter alia, that seven members shall serve on the Commission for terms of four years and until their successors are elected and qualify. 1/ Duties are specified and include the administration of aeronautics laws; allocation, disbursement, and expenditure of funds; general authority over the lands acquired for aeronautical or airport purposes; and making contracts and agreements, which duties appear to involve an exercise of sovereign power. This Commission is so similar to the airport commissions about which this Office has opined that those prior opinions cited supra would be applicable here, as well.

Thus, it is the opinion of this Office that one who would serve simultaneously on a city council and a county airport commission would most probably contravene the dual office holding provisions of the State Constitution.

If an individual holds an office on the day he assumes a second, incompatible office, he is deemed to have vacated the first office by operation of law. However, that person may continue to perform the duties of the previously held office as a de facto officer, rather than de jure, until a successor is duly selected to complete his unexpired term of office. See Act No. 1096 of 1974; Walker v. Harris, 170 S.C. 242 (1933); Dove v. Kirkland, 92 S.C. 313 (1912); State v. Coleman, 54 S.C. 282 (1898); State v. Buttz, 9 S.C. 156 (1877). 2/ Applying this body of law

1/ Act No. 1096 provides for election of Commission members by a majority of the Horry County legislative delegation, including the Senator. This Office is advised that Horry County Council has taken over the appointment power as to Commission members pursuant to Section 4-9-170, Code of Laws of South Carolina (1976).

2/ A de jure officer is "one who is in all respects legally appointed and qualified to exercise the office." 63 Am.Jur.2d Public Officers and Employees § 495. A de jure officer is "one who is in possession of an office, in good faith, entered by right, claiming to be entitled thereto, and discharging its duties under color of authority." Heyward v. Long, 178 S.C. 351, 183 S.E. 145, 151 (1936); see also Smith v. City Council of Charleston, 198 S.C. 313, 17 S.E.2d 860 (1942) and Bradford v. Byrnes, 221 S.C. 255, 70 S.E.2d 228 (1952).

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to your situation, you would be a de jure officer as a city councilman; yet you would continue to serve as a de facto member of the Horry County Airport Commission until your successor has been selected and qualifies.

Congratulations on your election to Conway City Council. Please let us know if we may provide additional assistance to you.

Sincerely,

Patricia D. Petway
Patricia D. Petway
Assistant Attorney General

PDP:djg

Enclosures

REVIEWED AND APPROVED BY:

Robert D. Cook

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