

1984 WL 249840 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 12, 1984

*1 The Honorable D. N. Holt, Jr.

Member

House of Representatives

c/o Charleston County Legislative Delegation

Post Office Box 487

Charleston, South Carolina 29402

Dear Representative Holt:

By your letter of February 26, 1984, you have asked whether an individual who is an appointed member of the Charleston County Election Commission may run in a non-partisan election for the North Charleston City Council and then, if elected, serve in both positions simultaneously.

[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. 726 (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 previously on numerous occasions that a member of a City Council is an officer for dual office holding purposes. Enclosed are Opinions dated September 15, 1983, and January 31, 1984, which reach that conclusion as to City Council members.

This Office has concluded on several occasions that members of county Election Commissions hold offices for the purposes of dual office holding. Enclosed are Opinions of the Attorney General dated September 24, 1982, and July 8, 1983, concluding that members of the Florence and Marion County Election Commissions, respectively, hold offices for dual office holding purposes. Since the Charleston County Election Commission was established by the same statutes which authorized the establishment of the Florence and Marion County Commissions and since it exercises the same broad powers pursuant to [Section 7-13-70, Code of Laws of South Carolina \(1976\)](#), a member of the Charleston County Election Commission would likewise be considered an officer for dual office holding purposes.

The constitutional provisions prohibiting dual office holding do not prohibit one presently holding an office from offering for election for a second office. Whether the election is partisan or non-partisan is not a consideration.

If, however, one person holds one office on the date he assumes the second office, both offices falling within the provisions of [Article XVII, § 1A of the Constitution](#), he is deemed to have vacated the former office. However, he 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 term of office (or to assume his duties if the term of service is indefinite). See, [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).¹

*2 In conclusion, one who would serve simultaneously as a member of the Charleston County Election Commission and the North Charleston City Council would contravene the dual office holding provisions of the Constitution of South Carolina.

Sincerely,

Patricia D. Petway
Staff Attorney

Footnotes

- 1 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 facto 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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