

1984 WL 249889 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 16, 1984

*1 William H. Griffin, Esquire
Office of General Counsel
South Carolina Employment Security Commission
Post Office Box 995
Columbia, South Carolina 29202

Dear Mr. Griffin:

By your letter, of May 1, 1984, you have asked whether one person simultaneously serving on a town council while being employed as a Field Deputy II by the Employment Security Commission would violate the dual office holding provisions of the Constitution of the State of South Carolina. For the reasons stated below, it is the opinion of this Office that one person may simultaneously hold both positions.

[Article XVII, § 1A of the South Carolina Constitution](#) provides that ‘. . . no person shall hold two offices of honor or profits 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, 53 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 one who is elected to serve on a town or city council is an officer for dual office holding purposes. See, for example, Ops. Atty. Gen. dated January 31, 1984; September 7, 1982; and July 8, 1982 (copies enclosed).

One who would hold the position of Field Deputy II with the Employment Security Commission would most probably be considered an employee of that state agency rather than an officer. He is employed by the agency pursuant to the provisions of [Section 41-29-70, Code of Laws of South Carolina \(1976\)](#), and is considered to occupy a classified position by State Personnel. He has taken no oath and is not commissioned by SLED or the Secretary of State for his position. His position has no tenure for a specified term of years. His salary is determined by reference to grades established by State Personnel. The job description provided by State Personnel specifies certain minimum qualifications: a bachelor's degree and three (3) years of specified experience. Functions are specified in the job description, to include: ‘Under general supervision advises employers on questions of liability, investigates employee eligibility for benefits, conducts special investigations for prosecution of claimants who violate applicable laws and promotes understanding of the compensation program; performs duties of a semiroutine or diversified nature.’ Practically speaking, this individual applies agency policy to a specific fact situation, exercising very little discretion and subject to approximately five levels of supervision within the agency. It is not likely that he would be considered as exercising a portion of the sovereign powers of the State. Thus, the following from [Sanders v. Belue](#) would reiterate our conclusion: ‘Conversely, one 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.’ 78 S.C. at 174; See also, 1975 Op. Atty. Gen., No. 4000, dated March 19, 1975.

*2 We trust that the foregoing will satisfactorily respond to your inquiry. Please advise this Office if you need clarification or additional assistance.

Sincerely,

Patricia D. Petway
Staff Attorney

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