

1983 S.C. Op. Atty. Gen. 168 (S.C.A.G.), 1983 S.C. Op. Atty. Gen. No. 83-98, 1983 WL 142767

Office of the Attorney General

State of South Carolina

Opinion No. 83-98

December 20, 1983

*1 Mr. John H. Rickenbacker
692 Crawford Street
Orangeburg, South Carolina 29115

Dear Mr. Rickenbacker:

You have asked our advice as to whether serving simultaneously as Administrative Assistant to the Lieutenant Governor and as a member of county council would violate the constitutional provision prohibiting an individual from holding two offices of honor or profit at the same time. It is our opinion that it would not.

[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 consistently concluded that a member of county council holds an office. [See e.g.](#), Op. Atty. Gen. November 15, 1983. Therefore, we must determine whether an Administrative Assistant to the Lieutenant Governor holds an office.

The position of Administrative Assistant to the Lieutenant Governor is not one created by statute or any other law of which we are aware. The duties of the position are not prescribed by any statute and there is no term fixed by law. The holder of the position does not take an oath, nor does that person receive a commission. We understand that he is designated as a classified state employee by State Personnel. As the Supreme Court stated in [Sanders v. Belue](#), 78 S.C., [supra](#) at 74, 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 offices, and though the employment be in or about a public work or business, is a mere employee.

By way of analogy, this office has stated that even if a position arguably requires the exercise of some portion of sovereign powers, where the position is not created and its duties prescribed by statute, the position is not an office, but employment. [See, Op. Atty. Gen.](#), August 16, 1983. Moreover, we have consistently concluded that the position of executive director which would be akin to that of administrative assistant, is not an office. [See, Op. Atty. Gen.](#), October 20, 1983; [Op. Atty. Gen.](#), August 16, 1983; 1975 [Op. Atty. Gen.](#), No. 4000, p. 69.

Accordingly, for all of the above reasons, we would conclude that the Administrative Assistant to the Lieutenant Governor is not an office, but is an employee. Therefore, to simultaneously serve as administrative assistant and a member of County Council would not, in our opinion, contravene the dual office holding provision of the South Carolina Constitution.

*2 If you have any further questions, please let us know.
Sincerely,

Robert D. Cook

Executive Assistant for Opinions

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