

1983 S.C. Op. Atty. Gen. 109 (S.C.A.G.), 1983 S.C. Op. Atty. Gen. No. 83-69, 1983 WL 142738

Office of the Attorney General

State of South Carolina

Opinion No. 83-69

September 15, 1983

*1 David H. Wilkins, Esquire
Attorney
City of Mauldin
Post Office Box 675
Mauldin, South Carolina 29662

Dear Mr. Wilkins:

By your letter of June 22, 1983, you have requested an opinion on whether it would be a violation of the dual office holding provisions of the South Carolina Constitution for a City Councilman to serve as full-time interim Director of the Greenville County Recreation Commission, which is a position appointed by the Commission.

[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 previously determined that a member of a city council holds an office within the meaning of the dual office holding provisions of the Constitution. *See*, 1981 *Op. Atty. Gen.*, dated September 30, 1981, and 1982 *Op. Atty. Gen.*, dated June 18, 1982 (copies enclosed). This conclusion is based upon the fact that the position of municipal councilman is an elective office which duties involve an exercise of the sovereign power of the State.

The Greenville County Recreation Commission was created by Act No. 1329 in 1968. Among powers given to the Commission by Section 5(12) thereof were the powers to appoint agents, employees, or servants, to prescribe their duties; to fix compensation; and to determine when or if the employees, agents, or servants shall be bonded for the performance of their duties. No mention is otherwise made of a Director in the initial Act or in any subsequent act amending Act No. 1329; no specific duties were imposed on a director, and his term and salary were not fixed. It is the opinion of this office that the Director would be an employee rather than an officer, within the meaning of the constitutional provisions referred to. In this connection, the following from [Sanders v. Belue](#) is apposite: ‘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 (copy enclosed).

Based upon the foregoing, it is the opinion of this office that only one of the two positions referred to in your request, namely that of City Council member, would be an office as contemplated by the South Carolina Constitution. The same person may therefore occupy both of such positions without violating the dual office holding provisions of the Constitution.

*2 I apologize for the delay in responding to your request and hope that the above answers your question. If you need further clarification, please contact me.

Sincerely,

Patricia D. Petway
Staff Attorney

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