

1981 WL 158158 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 23, 1981

*1 J. Lewis Cromer, Esquire
Richland County Attorney
Post Office Box 192
Columbia, South Carolina 29202

Dear Mr. Cromer:

Your recent opinion request addressed to the Attorney General has been referred to me for reply. You have asked whether serving as County Attorney and on the South Carolina Commission on Aging constitutes dual office holding.

[Article XVII, § 1A of the South Carolina Constitution](#) states that ‘. . . no person shall hold two offices of honor and profit at the same time.’ Also see Article VI, § 3. 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 \(1907\)](#). Other criteria such as tenure, salary, oath, etc. may also be relevant. [State v. Crenshaw](#), South Carolina Supreme Court, Op. No. 21189, filed April 9, 1980.

It has been the policy of this office for many years to consider a County Attorney an office within the dual office holding provision of the Constitution when the position is created by law. See Opinion dated September 18, 1975, enclosed. The position of Richland County Attorney is created by law pursuant to Act 581 of 1971. That Act creates the position, sets forth the duties, and specifies the compensation. Accordingly, it is our opinion that the position as Richland County Attorney is an office for dual office holding purposes.

The South Carolina Commission on Aging is created pursuant to [§ 43-21-10 et seq., Code of Laws of South Carolina \(1976\)](#). The duties of the Commission are set forth in § 43-21-40, and include, *inter alia*, the authority to accept and disburse funds. Moreover, § 43-21-110 provides that the General Assembly shall make an annual appropriation to carry out the work of the Commission. While a position on this Commission presents a close question, it is the opinion of this office that it is an office for dual office holding purposes. See [Darling v. Brunson, 94 S.C. 207 \(1912\)](#).

Accordingly, serving simultaneously as County Attorney and on the South Carolina Commission on Aging would constitute dual office holding.

You indicate in your letter that a recent Attorney General's opinion concluded that employment in the Solicitor's Office and membership in the House of Representatives did not constitute dual office holding. We are not aware of such an opinion.

Very truly yours,

James W. Johnson, Jr.
Assistant Attorney General

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