

1982 WL 189178 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 22, 1982

\*1 The Honorable William M. Campbell  
Member  
House of Representatives  
Richland County  
519-A Blatt Building  
Columbia, South Carolina 29211

Dear Mr. Campbell:

On April 16, 1981, you requested an opinion from me on the following question:

'Whether a member of the South Carolina General Assembly, employed by a circuit solicitor in an administrative capacity, is in violation of the provisions of [Article 17, Section 1A of the Constitution of South Carolina](#) by virtue of being specially deputized on occasional or intermittent dates to exercise the powers of the solicitor?'

I have delayed answering your letter until the end of the year in order to ascertain the compensation which you receive, as well as the precise duties which you perform.

You were employed on October 23, 1978, by the Solicitor of the Fifth Judicial Circuit, James Anders, at a salary of \$12,646.00. Effective August 20, 1979, the salary was \$23,878.40. Mr. Harpootlian Deputy Solicitor of the Fifth Judicial Circuit, informed me during the course of the past year that your salary was \$26,312.00.

For the year 1979, your earnings were \$11,334.90; for the year 1978, your earnings were \$5,455.04; and to mid-1981, your earnings were \$5,009.40. The foregoing amounts were obtained from the Richland County Administrator, together with the dates of the payrolls on which these payments were made.

In July of 1981, Kershaw County paid you during the period July 1, 1981, through December 1981, \$9,838.72. These are styled by the County Administrator of Kershaw County as 'salary checks.' In April 1981, you were paid the sum of \$6,909.48, which is styled by Kershaw County as 'general fund.'

I assume that these payments were made from general funds of the two counties involved, as your name does not appear on the records required to be filed with the State Auditor within sixty (60) days following the closing of the county fiscal year, giving an accounting for the monies disbursed under those monies appropriated as State support for the office of Solicitor.

In either event, it appears that you are an employee of one county or the other and that the primary concern should be addressed to the specific duties which you perform. You are employed as a 'special prosecutor', with some additional administrative duties imposed upon you. Mr. Harpootlian states that you have been the special trial attorney 'on probably no more than twelve (12) occasions' and Mr. Anders' recollection is approximately the same. In order to ascertain this more particularly, it was necessary to have representatives from this Office check each of the indictments for the years 1979, 1980 and 1981. The trial attorney's name is ascertained from the indictment, which bears the notation of the Clerk of Court as to appearances for the State and for the defendant. In your instance, it appears that you disposed of one hundred seventy-two (172) indictments in 1979, only three (3) of which resulted in trials; I assume that the remainder were pleas of guilty. In 1980, you disposed of forty (40) indictments,

eight (8) of which appear to have been trials. In 1981, you appear to have disposed of eighteen (18) indictments, five (5) of which were disposed of by trial, and the remainder by pleas.

\*2 Whether one acts as a prosecutor in a case which is tried before a jury or whether one represents the State in the receiving of a plea of guilty, undoubtedly there is an exercise of a portion of the sovereignty of the State, and your classification in Richland and Kershaw Counties as a 'special prosecutor' recognizes the validity of this conclusion. The occasions on which you represent the interests of the State as a special prosecutor are more than occasional, particularly in view of the fact that the General Assembly was in session from January to August 1979, on approximately the same dates in 1980 and almost continuously in 1981. This would indicate that your appearances on behalf of the State are necessarily limited to a short period of time. It appears, however, that from the payrolls of Richland and Kershaw Counties that your services are compensated for periods when the Legislature is in session.

I am of opinion that you meet all the criteria for the ascertainment of whether or not the position you hold with the Solicitor of the Fifth Judicial Circuit constitutes an office, and, in my opinion, it does. You are, therefore, in violation of the dual officeholding provision of the Constitution of this State. Such a conclusion, however, does not affect your status as a Member of the General Assembly; that question is for determination by the General Assembly itself, which has the constitutional authority to judge the qualifications of its Members. See [Culbertson v. Blatt](#), 194 S.C. 105, 9 S.E.2d 218.

Very truly yours,

Daniel R. McLeod  
Attorney General

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