

1982 WL 189222 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 29, 1982

\*1 Joseph H. Earle, Esquire  
Greenville County Attorney  
14-A Courthouse Annex  
Greenville, South Carolina 29601

Dear Mr. Earle:

In response to your letter of March 5, 1982, there was apparently a misunderstanding about someone in this office being in the process of writing an opinion for W. B. Bennett, Jr., concerning the question of whether a position on the District Commission of the Greenville County Soil and Water Conservation District and a position on the Greenville County Council constitutes dual office holding. Therefore, I am treating your letter as a request for an opinion on this question.

It is provided in [Article XVII, Section 1A of the South Carolina Constitution](#) that ‘. . . no person shall hold two offices of honor and profit at the same time.’ Also see Article VI, Section 3. The prohibition against dual office holding is more particularly addressed to county council members in [§ 4-9-100 of the Code of Laws of South Carolina](#), 1976, as amended. For these provisions to be contravened, a person must hold two public offices concurrently 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 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](#), 266 S.E.2d 61 (1980).

This office has repeatedly held that the position of county councilman is an office within the meaning of [Article XVII, § 1A](#). See, e.g. Opinion of the Attorney General to H. Michael Spivey, January 12, 1979, (copy attached hereto). The office of county councilman is created pursuant to Chapter 9, Title 4 of the Code of Laws of South Carolina, as amended, and is provided therein with numerous powers involving the exercise of the sovereignty of the State. The legislature expressed its clear intention that the position of county councilman be considered an office in [§ 4-9-100](#), which states in pertinent part that: ‘No member of council, including supervisors shall hold any other office of honor or profit in government . . .’ (emphasis added)

It has also been the opinion of this office that a Commissioner for a soil and water conservation district holds a public office. See, Opinion of Attorney General to F. Hall Yarborough, January 27, 1982 (copy attached hereto). This conclusion is based on the fact that the Commissioner's positions are provided for by statute, which defines the method of their nomination and election, their terms of office, and their powers and duties. See, Sections 49-9-1210 et seq., Code of Laws of South Carolina, 1976, as amended.

Based on the foregoing, it is the opinion of this office that a person concurrently serving as a member of the Greenville County Council and a District Commissioner of the Greenville County Soil and Water Conservation District would be in violation of [Section 4-9-100 of the Code of Laws of South Carolina](#), 1976, as amended, and the provisions of the South Carolina Constitution prohibiting dual office holding.

Very truly yours,

\*2 Helen T. Zeigler  
Staff Attorney

1982 WL 189222 (S.C.A.G.)

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.