

1981 WL 158258 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 5, 1981

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

Dear Mr. Cromer:

You have asked the opinion of this Office on whether the county attorney for Richland County concurrently may serve as a member of the South Carolina Commission on Aging.

[Article XVII, Section 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, Section 3. This provision is contravened when a person concurrently holds two public offices ‘charged by law with duties involving an exercise of some part of the sovereign power, either small or great, in the performance of which the public is concerned, and which are continuing and not occasional or intermittent.’ [Sanders v. Belue, 78 S.C. 171, 174 \(1907\)](#). Criteria to be considered in determining whether a position is a public office rather than one of employment include, among others, whether the position was created by the General Assembly; whether duties, tenure, salary and oath are prescribed or required; and whether qualifications for appointment are established. [State v. Crenshaw](#), South Carolina Supreme Court Op. No. 21189, April 9, 1980.

The South Carolina Commission on Aging is established and governed by [Sections 43-21-10 to 43-21-120 of the Code of Laws of South Carolina](#), 1976. These sections provide for the appointment of members of the Commission by the Governor; establish terms of office for such members; designate it as a State Agency; provide for an annual appropriation for the Commission by the General Assembly; and prescribe the powers and duties of the Commission, which include the acceptance and disbursement of funds, the execution of a program to meet the needs of aging citizens and the receipt on behalf of and in the name of the State grants from government sources and gifts, bequests, grants, funds and property from any other source. Considering these factors, membership on the Commission would constitute a public office within the meaning of [Article XVII, Section 1A](#).

This Office previously has concluded that whether the position of county attorney for a particular county is a public office depends on how the position is created and whether it has prescribed duties. The position of county Attorney for Richland County is provided for by Act No. 581, Acts and Joint Resolutions, 1971, as amended. This Act also prescribes the duties of the county attorney. Further, Article F of the Richland County Code of Ordinances, which refers to Act No. 581, similarly provides for the position of county attorney and deals with the duties and responsibilities of the position. Considering Act No. 581 and Article F, the position of county attorney for Richland County also is a public office.

Based on the foregoing, it is the opinion of this Office that a person concurrently serving as the county attorney for Richland County and a member of the South Carolina Commission on Aging would be in violation of the provisions in the South Carolina Constitution prohibiting dual office holding.

Sincerely,

*2 James M. Holly
Assistant Attorney General

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