

1981 WL 157878 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 21, 1981

*1 Elsie T. Kirby
Executive Secretary
Charleston County Legislative Delegation
Post Office Box 487
Charleston, South Carolina

Dear Ms. Kirby:

You have asked the opinion of this Office on the question of whether a person concurrently serving as a member of the St. Andrews Parks and Playground Commission of Charleston County and as a probation officer would be in violation of the constitutional provisions prohibiting 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., also may be relevant. [State v. Crenshaw](#), South Carolina Supreme Court, Op. No. 21189, 4-9-80.

This Office previously has concluded that the discharge of the duties assigned by statute to probation officers involve an exercise of some portion of the sovereign power of the State. [§ 24-21-280, Code of Laws of South Carolina](#), 1976. Therefore, a probation officer holds a public office within the meaning of [Article XVII, § 1A](#). Ops. Atty. Gen'l., 1964, No. 1769.

Act 228 of 1957, as amended, creates the St. Andrews Parks and Playgrounds Commission, provides for the appointment of its members and assigns it certain duties, including some related to taxation. The provisions of this Act, as amended, establish membership on the Commission as a public office within the meaning of [Article XVII, § 1A](#).

Based on the foregoing, it is the opinion of this Office that a person concurrently serving as a probation officer and as a member of the St. Andrews Parks and Playgrounds Commission would be in violation of the dual office holding probation set forth in [Article XVII, § 1A of the South Carolina Constitution](#).

Sincerely,

James M. Holly
Assistant Attorney General

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