

1982 WL 189372 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 20, 1982

*1 James M. Dickson, Esquire
Attorney at Law
202 Church Street
Clover, South Carolina 29710

Dear Mr. Dickson:

You have requested the opinion of this Office on the question of whether a member of the York County Natural Gas Authority is required to resign his position when he is elected to the York County Council.

In answering your question, reference must be made to the dual office holding provisions of [Article XVII, § 1A of the South Carolina Constitution](#) and [§ 4-9-100 of the Code of Laws of South Carolina](#), 1976, as amended. Both of these provisions prohibit a person from holding two offices of 'honor or profit' at the same time. More specifically, [Section 4-9-100 of the South Carolina Code](#) prohibits a county council member from holding 'any other office of honor or profit in government, except military commissions and commissions as notaries public, during his elected term.'

In determining whether a position constitutes an office for dual office holding purposes, the key factor to be considered is whether the position is charged by law with duties involving an exercise of some portion of the sovereign power of the State. [Sanders v. Belue, 78 S.C. 171 \(1902\)](#). 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 51 \(1980\)](#).

An examination of Act No. 959 of the 1954 Acts and Joint Resolutions, which establishes the York County Natural Gas Authority and prescribes the powers and duties of its members, reveals that it is authorized to perform several functions which this Office has traditionally viewed as involving an exercise of the sovereign power of the State. Its powers as set forth in Section 4 of that Act include the authority to set rates and charges for gas and all services furnished by the system, the power to exercise eminent domain for any corporate purpose, and the power to issue negotiable bonds. Since the members of the Authority are authorized to exercise a portion of the sovereign power of the State, they would be considered officeholders within the meaning of the dual office holding provisions cited above.

Based on the foregoing, it is the opinion of this Office that a member of the York County Natural Gas Authority would be required under the dual office holding provisions of the South Carolina Constitution and [§ 4-9-100](#) of the Code of Laws of South Carolina, 1976, as amended, to resign from that position if elected to the York County Council.

Very truly yours,

Helen T. Zeigler
State Attorney

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