

1980 WL 120632 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 28, 1980

*1 Austin M. Sheheen, Jr.
Chairman
Kershaw County Council
Post Office Drawer 428
Camden, South Carolina 29020

Dear Mr. Sheheen:

You have asked the opinion of this Office on whether it would constitute dual office holding for the Kershaw County Attorney to serve concurrently as a member of the Kershaw County Board of Education. Article XVII, § 1A of the South Carolina Constitution provides 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 must hold concurrently two public offices which have duties involving an exercise of some part of the sovereign power of the State. See Sanders v. Belue, 78 S.C. 171 (1907).

Previously, Attorney General McLeod has stated that:

Whether or not a county attorney is an office would depend upon how the office itself is created. If the position is created by state statute or county ordinance and the duties of the position make it an ‘office’ rather than mere employment, it would be violative of the dual office prohibitions of the State Constitution for one individual to hold the office of county attorney and another office. Opinion to James I. Refearn, Esquire, dated August 28, 1974.

The position of county attorney is not created by an act of the General Assembly, and I am informed that it is not created by an ordinance of Kershaw County. Thus, the following quotation from Sanders v. Belue, is applicable to that position:

. . . one who merely performs the duties required of him by persons employing him under an express contract or otherwise, though such persons be themselves public officers, and though the employment be in or about public work or business, is a mere employee. *Ibid.*, p. 174.

Based on the foregoing, it is the opinion of this Office that the position of Kershaw County Attorney is not a public office within the meaning of the provision of the South Carolina Constitution prohibiting dual office holding.

Sincerely,

James M. Holly
State Attorney

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