

1982 WL 189462 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 14, 1982

*1 Mr. Francis K. Sullivan
Executive Secretary
Charleston County Legislative Delegation
Post Office Box 487
Charleston, South Carolina

Dear Mr. Sullivan:

You have requested the opinion of this Office on the question of whether the dual office holding provisions of the South Carolina Constitution prohibit a person from serving concurrently as a State Highway Patrolman and as a member of the North Charleston Public Service District Commission.

It is provided in [Article XVII, § 1A of the South Carolina Constitution](#) that ‘. . . no person shall hold two offices of honor or profit at the same time.’ 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 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 \(1980\)](#).

The North Charleston Consolidated Public Service District Commission was established by Act No. 521 of the 1957 Statutes at Large, and the powers and duties of its members were prescribed therein. Its duties are to construct, operate, maintain and enlarge, when necessary, a water, sewage, fire protection, street lighting and garbage disposal system for the area under its jurisdiction. To accomplish these purposes, the Commission is given the powers, *inter alia*, to prescribe regulations concerning the water, sewer and garbage disposal systems, to issue permits for connection with any sewer constructed and maintained by the Commission, to determine the rates and charges for use of the sewer system, to exercise the power of eminent domain, and to borrow money and issue bonds and notes. These types of functions involve the exercise of a portion of the sovereign power of the State, and therefore the members of this Commission would be considered officers under the dual office holding provisions of the Constitution. This is in keeping with a previous opinion of this Office which found that members of the James Island Public Service District Commission were officeholders for dual office holding purposes. *See*, 1975 Op. Atty. Gen., No. 3991 (copy attached).

The method of appointment and powers and duties of highway patrolmen are provided for in [§§ 23-5-10 and 23-5-40 of the Code of Laws of South Carolina](#), 1976, as amended. They are commissioned by the Governor and are given the duty of enforcing the laws of the State relative to highway traffic and motor vehicles. To this end their powers are similar to those of sheriffs and they are furthermore given the same power and authority held by deputy sheriffs in enforcing the criminal laws of the State. This Office has traditionally considered these kinds of functions to involve an exercise of the sovereign power of the State and, therefore, those holding positions as highway patrolmen would be considered officers for dual office holding purposes. *See*, e.g. *State v. Crenshaw, supra*; Op. Atty. Gen. dated February 23, 1979, to James A. Metts (copy attached).

*2 Based on the foregoing, it is the opinion of this Office that a person could not serve concurrently as a highway patrolman and as a member of the North Charleston Public Service District Commission.

Very truly yours,

Helen T. Zeigler

Assistant Attorney General

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