

1980 WL 120680 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 20, 1980

***1 Re: Opinion Request**

Mr. Tommy L. Metts
Route 1
Box 315
Little Mountain, SC 29075

Dear Mr. Metts:

You have asked whether the dual officeholding provision would be violated if an individual employed as General Counsel for the Department of Health and Environmental Control also served as a magistrate. The case of [Sanders v. Belue](#), 78 S.C. 171, 58 S.E. 762, sets forth the definition of officer for dual officeholding purposes:

One who is charged by law with duties involving an exercise of some part of a sovereign power, either small or great, in the performance of which the public is concerned, and which are continuing, and not occasional or intermittent, is a public officer.

The previous and frequently reiterated position of this Office with respect to whether an attorney employed by a public body is or is not an officer within the meaning of the dual officeholding provision of the Constitution is that a status of officer is created if provision is made by statute for the position of attorney, but that in the absence of such statutory creation, the position of attorney for a public entity establishes a relationship of attorney-client, and not that of officer.

The position of General Counsel for the Department of Health and Environmental Control is not created by statute. The duties of this attorney are assigned administratively, and there is no set term of office. Accordingly, it is the opinion of this Office that the position of General Counsel for the Department of Health and Environmental Control is not an office within the meaning of the dual officeholding provision of the Constitution.

Sincerely,

James W. Johnson, Jr.
Assistant Attorney General

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