

1980 WL 121132 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 31, 1980

*1 Gerald W. Burnett
Deputy Comptroller
Office of the Comptroller General
Wade Hampton Building—Third Floor
Columbia, South Carolina

Dear Mr. Burnett:

You have asked the opinion of this Office on whether an elected county auditor may offer for election to the House of Representatives without resigning.

There is no statute of the State that would prohibit a county auditor from offering for election to any other office if he is otherwise qualified. Similarly, there is no statute that would require him to resign the office of county auditor in order to offer for election to another office.

[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 violated, a person concurrently must hold two public offices which have duties involving an exercise of some part of the sovereign power of the State. [Sanders v. Belue](#), 78 S.C. 171 (1907). The question thus arises as to whether this prohibition would apply to the circumstances raised by you.

There is no question that a member of the House of Representatives holds a public office. [Article III of the South Carolina Constitution](#). The powers and duties of a county auditor are listed in part in [§§ 12-39-10 to 12-39-350 of the Code of Laws of South Carolina](#), 1976. The powers and duties set forth therein clearly involve an exercise of a portion of the sovereign power of the State. Therefore, the position of county auditor is a public office subject to the dual office holding prohibition.

Based on the foregoing, it is the opinion of this Office that no statute of the State requires an elected county auditor to resign his office in order to offer for election to the House of Representatives. However, if the county auditor is elected to the House, the dual office holding provision of the South Carolina Constitution would require him to resign from the former office.

Sincerely,

James M. Holly
State Attorney

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