

1980 WL 120787 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 24, 1980

\*1 Honorable Horace C. Smith

Senator

Spartanburg County

Gressette Office Building

Columbia, SC

Dear Senator Smith:

You have requested an opinion as to whether someone who serves on the Spartanburg County Planning and Development Commission and is also mayor of a municipality in Spartanburg County violates the dual office-holding provision of the [South Carolina Constitution, Article VI, Section 3](#) and [Article XVII, Section 1 of the Constitution](#) provide that no person shall hold two offices of honor or profit at the same time.

A 1907 decision defined 'office' as follows:

One who is charged by law with duties involving an exercise of some part of the 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.

[Sanders v. Belue, 78 S.C. 171, 58 S.E. 762 \(1907\)](#). There is no question but that the position of mayor falls within this definition. See Op. Att'y. Gen. September 14, 1977; Op. Att'y. Gen. December 16, 1977; Op. Att'y. Gen. April 14, 1977; copies of which are attached herewith.

The Spartanburg County Planning and Development Commission was created by Act No. 323 of 1965. The powers and duties of the Commission included purchasing and selling real property and engaging in other activities for the promotion of agricultural, industrial and commercial development in the County. These powers were expanded by Act No. 528 of 1971 to include exercising all other powers authorized for local planning commissions by Article 3 of Act No. 487 of 1967.

It appears, therefore, that a position on the Spartanburg Planning and Development Commission also constitutes office-holding, as these powers allow exercises of the sovereignty. For examples of other county planning commissions which have been determined to be offices, see 1967 Op. Att'y. Gen. 189; 1966 Op. Att'y. Gen. 216; and Op. Att'y. Gen. April 7, 1977; copies of which are attached hereto. Consequently, it is the opinion of this office that a person who is mayor of a municipality in Spartanburg County and serves on the Spartanburg County Planning and Development Board violates the dual office-holding provision of the South Carolina Constitution.

You have mentioned in your request letter that the mode of appointing Commissioners to the Spartanburg County Planning and Development Commission was changed as of January 1, 1980. However, as is obvious from the [Sanders](#) definition, the method of appointment has no relevance in determining whether a position is an office.

I trust I have answered your question. Please do not hesitate to contact me if you need further information.

Very truly yours,

James W. Johnson, Jr.

Assistant Attorney General

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