

1977 S.C. Op. Atty. Gen. 141 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-183, 1977 WL 24525

Office of the Attorney General

State of South Carolina

Opinion No. 77-183

June 10, 1977

*1 James A. Timmerman, Jr., Ph.D.

Executive Director

South Carolina Wildlife & Marine Resources Department

P. O. Box 167

Columbia, SC 29202

Dear Dr. Timmerman:

You have asked whether four categories of individuals may serve on the South Carolina Coastal Council created by the recently enacted Coastal Management Legislation. These categories are:

1. State elected officials
2. State employees
3. Local elected officials
4. Municipal and County employees

The Coastal Management Legislation you refer to was enacted as R 204, S 280, and approved by the Governor on May 24, 1977, to take effect July 1, 1977. Section Four of the Act creates the South Carolina Coastal Council, and Section Five creates the Council's duties. These duties are extensive and include receiving and spending public and private funds, holding public hearings, promulgating rules and regulations to carry out the Act, examining, modifying, approving or denying permits for activities covered by the Act, revoking or suspending such permits, regulating estuarine and marine sanctuaries and establishing and controlling pipeline corridors in certain areas.

Clearly these powers involve an exercise of the State's sovereign power on a continuing basis in an area of public concern. Therefore membership on the Council would constitute an office in the Constitutional sense, as that position has been defined by the Courts of this state.

Since Council membership constitutes an office, members cannot hold a second office without violating Constitutional restrictions on dual office holding. Elected state and local officials, referred to in numbers one and three above, could not serve on the council without violating dual office restrictions.

It has generally been held by the Court that mere public employment does not constitute an office in the constitutional sense. Therefore, public employees both state and local, would not generally be prohibited by dual office holding restrictions from serving on the South Carolina Coastal Council. However, whether a particular position constitutes a public office or public employment must be determined on an individual basis.

Should you require a more detailed opinion concerning citations of authority, or discussing specific positions, please advise me and I will be happy to provide it at a later date.

Sincerely,

George C. Beighley
Assistant Attorney General

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