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Office of the Attorney General

State of South Carolina

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### QUESTION

Can one serve as a City Attorney of the City of Simpsonville, as a member of the Greenville Board of Zoning Appeals, and as a member of the South Carolina Coastal Council without violating the dual office holding provisions of the Constitution of South Carolina?

### STATUTES AND CASES

South Carolina Constitution, Article XVII, Section I(a) and Article VI, Section 3;

Code of Laws of South Carolina, §§ 5-23-70 to 5-23-160 (1976);

60 Acts and Joint Resolutions \_\_\_\_\_ (Act. No. 123) (1977);

[Sanders v. Belue](#), 78 S.C. 171, 58 S.E. 762 (1907).

### DISCUSSION

Article XVII, Section 1(a) and Article VI, Section 3, of the South Carolina Constitution provides that no persona shall hold two offices of honor or profit at the same time. An office has been defined by the South Carolina Supreme Court in [Sanders v. Belue](#), 78 S.C. 171, 58 S.E. 762 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.

The question of whether a municipal attorney is an office has been decided recently by this Office. A May 4, 1977, opinion, a copy of which is enclosed, has concluded that the position of municipal attorney is an office subject to constitutional restrictions of dual office holding.

Membership on the City of Greenville Board of Zoning Appeals also constitutes an office. Municipalities have been given statutory authority to create Boards of Adjustment of Boards of Zoning Appeals. See Code of Laws of South Carolina, §§ 5-23-70 to 5-23-160 (1976). The city ordinance creating this particular board provided for the membership of the board, the terms of office for the members, and method of appointment, and the general powers and duties. Among the powers and duties of this board is the power to hear and decide appeals made by citizens asking for special exceptions in the zoning provisions.

It is therefore the opinion of this Office that this Board of Zoning Appeals exercises some part of the sovereign power and is considered a public office.

Finally, a member of the South Carolina Coastal Council is a public officer within the definition of Sanders v. Belue, supra. The Coastal Council was created by 60 Acts and Joint Resolutions — (Act No. 123) (1977). The Act described the membership, the terms of office and the duties and powers of the Council. Those powers include: the ability to accept and expend financial assistance from public and private sources; the power to approve, deny, revoke and suspend permits; the power to promulgate and administer rules and regulations; and the power to enforce the provisions of the act and to institute legal proceedings to compel compliance with the provisions of the act. Undoubtedly these functions constitute an exercise of sovereign power. It is therefore the opinion of this Office that membership in the Council constitutes a public office.

#### CONCLUSION

\*2 One person may not hold at the same time the offices of the City Attorney of the City of Simpsonville, the position on the City of Greenville Board of Zoning Appeals, and a position on the South Carolina Coastal Council without violating the dual office holding prohibition of the South Carolina Constitution.

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