

1977 S.C. Op. Atty. Gen. 219 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-287, 1977 WL 24627

Office of the Attorney General

State of South Carolina

Opinion No. 77-287

September 14, 1977

\*1 To: Harold E. Trask, Jr.  
Executive Assistant  
Office of the Governor

### QUESTION

Is it a violation of the dual office holding provisions of the South Carolina Constitution to serve as Mayor of North Charleston and as a member of the South Carolina Interagency Council on Public Transportation?

### STATUTES AND CASES

South Carolina Constitution, Article XVII, Section IA and Article VI, Section 3;

77 Acts and Joint Resolutions 140 (No. 82);

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

[State ex rel. Herbert v. Ferguson](#), 142 Ohio 496, 52 N.E.2d 980 (1944).

### DISCUSSION

Article XVII, Section IA and Article VI, Section 3, of the South Carolina Constitution provides that no person 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 (1907), 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. [Id.](#) at 174.

Undoubtedly, the Mayor of North Charleston is a public officer. The position of Mayor has consistently been considered an office by the Supreme Court of South Carolina and this Office as that term is used in the South Carolina Constitution and defined in [Sanders](#). [Ashmore v. Greater Greenville Sewer District](#), 211 S.C. 77, 44 S.E.2d 88 (1947).

The Act creating the South Carolina Interagency Council on Public Transportation grants to said Council the powers to give advice and make recommendations to the Department of Highways and Public Transportation and the General Assembly on all matters dealing with public transportation in this State. 77 Acts and Joint Resolution 140 (No. 82 Section 7). It is the opinion of this Office that giving advice and making recommendations is not an exercise of sovereign power. This conclusion is supported by the case of [State ex rel. Herbert v. Ferguson](#), 142 Ohio 496, 52 N.E.2d 980 (1944), which held that a statute establishing a post-war program commission, with functions of finding facts, assisting in formulating plans, and making recommendations, did not constitute an exercise of 'sovereign powers.' Since the powers of the South Carolina Interagency Council on Public

Transportation are only advisory, on would not violate the dual office holding prohibition of the South Carolina Constitution by occupying the positions of Mayor of North Charleston and member of the South Carolina Interagency Council on Public Transportation.

CONCLUSION

It is not a violation of the dual office holding provisions of the South Carolina Constitution to serve as a member of the South Carolina Interagency Council on Public Transportation and as the Mayor of North Charleston.

\*2 Richard D. Bybee  
Staff Attorney

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