

1976 WL 30679 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

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\*1 Membership of the Richland County Recreation Commission and the position as S. C. Code Commissioner/Director of the Legislative Council both constitute offices subject to constitutional dual office holding restrictions.

Representative Harold Taylor  
Richland County

QUESTION PRESENTED:

Can the same individual simultaneously serve as the S. C. Code Commissioner/Director of the Legislative Council and as a member of the Richland County Recreation Commission?

STATUTES, CASES, ETC:

South Carolina Constitution, Article VI, Section 3, and Article XVII, Section 1A;

Code of Laws of South Carolina, 1962, as amended, Sections 51-395 et seq., 1-301, et seq., and 50-1;

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

DISCUSSION OF ISSUES:

Article VI, Section 3 and Article XVII, Section 1A of the South Carolina Constitution provide 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, et al. v. Belue, et al.](#), *supra*, 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.

This office in a previous opinion held that membership on a county recreation commission constitutes an office under the [Sanders](#) definition. The Richland County Recreation Commission was created by Code Section 51-395, *supra*, and the duties of such Commission are detailed in Section 51-395.4. This rather explicit list of powers includes the authority to sue and be sued, to acquire and control all properties necessary to its purpose, to expend all funds which it may receive, and to issue and sell general obligation bonds and general revenue bonds. Such an explicit grant of statutory authority, exercised on a continuing basis, constitutes an office in the constitutional sense.

The position of Code Commissioner is created by Code Section 1-301, *supra*. This section establishes how the position is to be filled, sets out the term of office and provides for a salary. Section 1-305 makes the Code Commissioner *ex officio* Director of the Legislative Council.

Section 1-306 spells out the Commissioner's duties. While these duties may not place upon the Commissioner a completely discretionary authority, nevertheless, this Section and the balance of the Chapter on the Code Commissioner, when taken together, result in the conclusion that the Commissioner is exercising the state's sovereign power.

The Commission must, among other duties, reduce the public laws of the State into as concise and comprehensive form as is consistent with the will of the General Assembly. The Commissioner may place in the Code of Laws any other material which he and the Committee on Statute Laws agree to insert. The Commissioner may also add analysis lines to each Act and Joint Resolution. The Code thus prepared by the Commissioner is the only general statute law of the state.

\*2 Such a group of statutory duties involves an exercise of state sovereignty on a continuing basis to prepare the official State Code of Laws and satisfies the Sanders definition of an office.

CONCLUSION:

Membership on the Richland County Recreation Commission and the position as S. C. Code Commission/Director of the Legislative Council both constitute offices subject to constitutional dual office holding restrictions. This question is subject to reasonable contentions to the contrary, because of the limited judicial guidance in this area of the law. Only a judicial examination of the individual facts could authoritatively determine the issue.

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