

1976 S.C. Op. Atty. Gen. 160 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4336, 1976 WL 22955

Office of the Attorney General

State of South Carolina

Opinion No. 4336

April 21, 1976

\*1 The same person may not simultaneously hold the positions of member of the Charleston County Planning Board and the Charleston City Planning and Zoning Commission. Acceptance of the second office acts as a vacation of the first office, but the individual may act as a de facto officer until his successor is appointed and qualified.

TO: Andrew F. Hodges,  
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#### QUESTION PRESENTED:

Can the same individual simultaneously serve as a member of the Charleston County Planning Board and as a member of the City of Charleston Planning and Zoning 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, Section 14–355; also Section 47–1021, et seq.;

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

[Darling v. Brunson](#), 94 S. C. 207, 77 S. E. 860; [State v. Buttz](#), 9 S. C. 156, — S.E. —.

#### 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 previous opinions has held that membership on a County Planning Board constituted an office under the [Sanders](#) definition. See 1974 Op. Atty. Gen., p.280, and the Opinion to Ben Scott Whaley dated July 15, 1975.

The Charleston City Planning and Zoning Commission was created pursuant to Code Sections 47–1021 and 1022, *supra*. These Sections provide for the method of appointment of members and the terms of office. Section 47–1022 provides that the appointed members shall hold no other municipal office, except that one member may serve on the board of adjustment. Such language implies that the drafters of the statute intended to create a municipal office.

Code Section 47–1025 gives the Commission authority to contract for such services as it may require, and the authority to expend funds appropriated for its use.

Code Section 47–1028 gives the Commission all power necessary to carry out its function, to promote municipal planning or carry out the purpose of this Code Article.

The Commission is required to adopt a master plan for the physical development of the city, hold public hearings, and conduct studies. After the plan is adopted, no physical alterations can be made in the municipality unless approved by the Commission.

Code Section 47–1036 gives the Commission the powers formerly granted by law to any planning or zoning commission of the municipality.

**\*2** There can be little doubt that these various statutory powers, taken together, create an office under the Sanders definition, supra. The duties are defined by law, and involve an exercise of the sovereign power on a continuing basis. The public is obviously concerned with the performance of these duties.

Based on the above analysis, the position of member on the Charleston City Planning and Zoning Commission constitutes an office in the constitutional sense. Therefore, if this position is accepted by a person holding a prior office, such acceptance acts as a vacation of the first office. The individual may validly continue to serve in the first office de facto, until his successor is appointed and qualified. See Darling v. Brunson, 94 S. C. 207, — S. E. — and State v. Buttz, 9 S. C. 156, — S. E. —. See also 1966 Op. Atty. Gen. p.216, 1965 Op. Atty. Gen. p.104, 1961 Op. Atty. Gen. p.208.

#### CONCLUSION:

The same person may not simultaneously hold the positions of member on the Charleston County Planning Board and the Charleston City Planning and Zoning Commission. Acceptance of the second office acts as a vacation of the first office, but the individual may act as a de facto officer until his successor is appointed and qualified.

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