

1978 WL 34669 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 25, 1978

*1 Mr. Robert H. McKie
534 Addison Street
Edgefield, SC 29824

Dear Mr. McKie:

Let me apologize for the fact that my recent letter of January 17, 1978, was not responsive to the question which you presented. You have asked whether or not the same individual may serve as a County Tax Assessor and hold some other office simultaneously in harmony with constitutional restrictions on dual office holding.

I am enclosing an Opinion dated August 7, 1964, which determined that a County Tax Assessor was not an office holder in the constitutional sense. I have examined this Opinion in the light of recent changes in South Carolina Law. In particular you point out two sections which relate to the duties of Tax Assessor. Act No. 208 of the 1975 Acts and Joint Resolutions of South Carolina, as amended by Act No. 618 of the 1976 Acts and Joint Resolutions, currently creates the position of the County Tax Assessor's Office.

Under the language of these sections, every county is to have a full time Tax Assessor whose responsibility is appraising and listing all real property. The duties of the Tax Assessor include maintaining a record of deed sales, transactions, building permits, tax maps and other records necessary for continuing re-assessment programs, searching for and discovering all real property not previously listed on the tax roles, re-appraising and re-assessing any and all real property so as to reflect its proper valuation in light of changed circumstances, determining assessments and reassessments of real property in such a manner that the ratio of assessed value to fair market value shall be uniform throughout the county, appearing before any appellate board to give testimony concerning the justification of any appraisal, having the right of appeal from any disapproval of or modification of any appraisal, and performing such other duties relating to the Office of Tax Assessor as may be requested by the laws of the State.

The Supreme Court of South Carolina has defined 'public officer' in the case of [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. Conversely, one who merely performs the duties required of him by persons employing him under an express contract or otherwise, though such persons be themselves public officers, and though the employment be in or about a public work or business, is a mere employee.

You have advised me that the position of County Auditor of Edgefield County is filled by the County Administrator, with approval of the County Council. The Auditor is hired by the Administrator and works directly for him, just as any other county employee would be hired. There is no election or appointment to this position other than the approval given by Council.

*2 Examining the duties set out in the Act concerning which the Tax Assessor has responsibility, it appears that the requisites of a public office are present. The duties of the Tax Assessor are defined by law, and they involve exercising in some degree the sovereign authority of the State on a continuing basis, in an area in which the public is concerned.

Decisions of the Tax Assessor may be appealed as a matter of right to any appellate board with competent jurisdiction. Rates upon which an individual's personal property taxes are based are not set by the Tax Assessor. However, he alone determines the value of the particular piece of real estate based on generally accepted techniques and methods for appraising real property. Such a determination of valuation directly affects the amount of taxation which a landowner will pay, because the tax rates are based on the assessed value of the property.

Based on the above changes in the law, it is my opinion that the 1964 Opinion should be revised, and that the office of Tax Assessor should be determined an office subject to constitutional restrictions on dual office holding. You will note the 1964 Opinion was based on the fact that there was no definite statutory provision as to the Assessor's duties, a fact which does not exist under the current law.

Based on the fact that the Tax Assessor holds a position created by law involving the exercise of some degree of sovereign power on a continuing basis, it is my Opinion that the Assessor holds an office subject to constitutional restrictions on dual office holding.

I hope this information will be helpful to you.
Sincerely,

George C. Beighley
Assistant Attorney General

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