

1990 WL 599325 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 10, 1990

*1 Ms. Faye O. Adams
Clerk and County Designee
Board of Registration
Saluda County Courthouse
Saluda, South Carolina 29138

Dear Ms. Adams:

You have advised that you are the secretary-clerk for the Saluda County Board of Registration and Election Commission. Additionally you are the Saluda County designee for the Medically Indigent Assistance Program. You perform both of these jobs in the same office simultaneously. You have asked whether there is any state law that prohibits the practice of holding two separate jobs or whether holding both of these positions simultaneously would be dual office holding.

Article XVII, Section 1A of the state Constitution provides that "no person may hold two offices of honor or profit at the same time ...," with exceptions specified for an officer in the militia, member of a lawfully and regularly organized fire department, constable, or a notary public. For this provision to be contravened, a person concurrently must hold two public offices which have duties involving an exercise of some portion of the sovereign power of the State. *Sanders v. Belue*, 78 S.C. 171, 58 S.E. 762 (1907). Other relevant considerations are whether statutes, or other such authority, establish the position, prescribe its tenure, duties or salary, or require qualifications or an oath for the position. *State v. Crenshaw*, 274 S.C. 475, 266 S.E.2d 61 (1980).

This Office has previously advised that, depending on the circumstances, a clerk for a county board of voter registration might or might not be an office. The determining factor is whether the clerk has been deputized for the purpose of taking applications and issuing voter registration certificates. Op.Atty.Gen. dated June 22, 1982, enclosed. If you, as clerk, have been so deputized, it is likely that your position of secretary-clerk would be considered an office for dual office holding purposes.

You had forwarded a copy of your position description for both positions within Saluda County. With respect to your position as the designated person in Saluda County to determine whether applicants for the medically indigent assistance program are eligible for those benefits, we note that no statute creates such a position, though Section 44-6-150(C)(1) of the South Carolina Code of Laws refers to the county "or its designee" with respect to the county's responsibilities under the program. No statute specifies duties to be exercised by the holder of the position, nor qualifications to be met by the incumbent. A salary is paid. Your position description does not indicate that an oath is required of the incumbent. Tenure is "at will," apparently, rather than for a specific term of years. The duties to be exercised by the incumbent appear to be ministerial, in that the Health and Human Services Finance Commission has established the guidelines which recipients of the medically indigent assistance program must meet and there is little, if any, room for the exercise of discretion in applying those guidelines.

*2 Considering all of the foregoing, it is our opinion that an employee of Saluda County who receives and reviews applications for the medically indigent assistance program would most likely not be an officer for dual office holding purposes but would instead be an employee. Thus, there would be no dual office holding problem in your circumstances even if you are deputized as secretary-clerk of the Board of Registration.

From your position description it is clear that you are a county employee. We are not aware of any statute in Title 7 (election laws) or Title 44 (concerning the medically indigent assistance program) which would prohibit a person from carrying out the responsibilities of each position simultaneously. No conflict of interest is apparent on the face of the position description. The Home Rule Act, in Section 4-9-30(6) of the Code, authorizes county councils to establish such ... positions in the county as may be necessary and proper to provide services of local concern for public purposes, to prescribe the functions thereof and to regulate, modify, merge or abolish any such ... positions, except as otherwise provided for in this title....

Thus, a county has wide discretion to create a position of employment such as yours, prescribe the functions thereof, and regulate, modify, merge, or abolish such positions; it does not appear that any law prohibits such a practice.

With kindest regards, I am Sincerely,

Patricia D. Petway
Assistant Attorney General

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