

1979 WL 43174 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

November 14, 1979

\*1 Franklin R. DeWitt, Esquire  
510 Highway 378  
Conway, South Carolina 29526

Dear Mr. DeWitt:

You have asked whether the constitutional provision which prohibits dual office holding would be violated if an individual simultaneously served as Mayor of the Town of Atlantic Beach and as the Public Defender of Horry County.

The Supreme Court has defined a public officer for dual office holding purposes in [Sanders v. Belue, 78 S.C. 171, 58 S.E. 762](#):

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.

The office of Mayor is clearly an office for dual office holding purposes. See 1976 Attorney General Opinion No. 4465, page 327.

The office of Public Defender for Horry County was presumably created pursuant to [Section 17-3-60, Code of Laws of South Carolina, 1976](#). This statute sets forth the steps required to establish a public defender system. It also sets forth certain qualifications for the Public Defender and prohibits Public Defenders and Assistant Public Defenders from representing persons charged with criminal offenses in their private practice of law. Moreover, it sets a ceiling on the salaries of Public Defenders and Assistant Public Defenders.

[Section 17-3-70, Code of Laws of South Carolina, 1976](#), provides for an annual appropriation from the General Fund of the State for the maintenance of the defender corporations. Section 17-3-80 provides for an appropriation for expenses of appointed private counsel and Public Defenders.

Under the standards set forth in [Sanders, supra](#), it is the opinion of this Office that the office of Public Defender for Horry County is an office for dual office holding purposes. Accordingly, one serving simultaneously as Mayor of the Town of Atlantic Beach and as Public Defender for Horry County would violate the constitutional provision which prohibits dual office holding.

Sincerely,

James W. Johnson, Jr.  
Assistant Attorney General

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