1978 WL 34789 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
March 21, 1978

***1 Re: Dual Officeholding**

In Re: Dual Office Holding; Regional Council of Governments

The Honorable John Henry Waller, Jr.,
State Senator
District No. 11, Of. No. 2
The State House
Columbia, South Carolina 29211

Dear Senator Waller:
Recently you have requested an Opinion from this Office concerning the State's Constitutional restrictions on dual office holding. You have asked if the same individual may simultaneously serve as a Marion County Election Commission member, a salaried director of a County Rural Recreation Commission and a member of the Pee Dee Regional Advisory Commission.

I am enclosing three previous Opinions from this Office which consider the questions you raise. These Opinions determine that the Election Commission constitutes a public office, but the Regional Advisory Commission does not. Also, the Recreation Director would be an employee of the Commission instead of a public officer.

Therefore, the situation you present does not constitute a violation of Constitutional restraints on dual office holding.
Sincerely,

George Co. Beighley
Assistant Attorney General

ATTACHMENT
July 10, 1970
Mr. R. T. Stevenson

Orangeburg City Administrator

P. O. Box 387

Orangeburg, South Carolina

Dear Mr. Stevenson;
I have considered at length your request for an opinion concerning the above subject as it relates to an individual who has been appointed, pursuant to Section 23-400, CODE OF LAWS, 1962, as a county commissioner of election after having previously been appointed to the Orangeburg (City) Board of Commissioners of Election.

There is no question but that a county commissioner of election is an 'officer' within the dual officeholding prohibition of the Constitution. O.C. CONST. art. II § 2; see, Sanders v. ??, 73 S.C. 171. The question thus resolves itself into whether

or not the position of municipal commissioner of election is an office and if it is, the individual in question cannot hold both offices simultaneously without being in violation of the constitutional prohibition.

It is the opinion of this office that there is, as a matter of law, no legally constituted Board of Commissioners of Election for the City of Orangeburg; and, it therefore follows, that a person appointed to membership upon this Board would not be holding an 'office.'

Orangeburg, as I am informed by you, adopted the Commission form of government and presently has a population in the range of 10,000-20,000 inhabitants. Up until the enactment of the 1952 Code of Laws, there were general statutes providing for the appointment of a Beard of Commissioners of Election for towns and cities adopting the Commission form of government. Reference here should be had to Section 7615 of the 1942 CODE OF LAWS relating to cities adopting the commission form of government in the population classes 7,000-10,000, 10,000-20,000, 50,000-100,000, and to Section 7654, pertaining to population classes 4,000-10,000 and 20,000-50,000. Copies of these statutes are enclosed. Which of these two statutes would have applied to Orangeburg would, of course, have depended upon what population classification it was in the time period 1942-1952, Section 47-621, 1962 CODE (Section 7359, 1942 CODE).

***2** Our research indicates that no legislation enacted between the 1942 and 1952 CODES repealed either Section 7615 or 7654, but they were not carried forward by the Code Commissioner into the 1952 CODE. Thus, this general statutory authority to appoint Boards of Commissioners of Election was lost through the failure to include the provisions in the 1952 CODE, although these commissions appear to have been made through error or inadvertence. State v. Heares, 148 S.C. 118, 145 S.E. 695; of. State v. Conally, 227 S.C. 507, 88 S.E.(2d) 591. No legislation since the 1952 codification has revived the provisions for appointment of these municipal boards. It is true that certain provisions of Articles 3 and 4 of Chapter 6, Title 47, 1962 CODE (pertaining to commission form in cities of 7,000-10,000, 10,000-20,000, and 50,000-100,000) do speak of a 'board of commissioners of election', but the failure to carry forward the statutory authority for appointment of members into the 1952 CODE terminated their legal existence.

Based upon the above discussion, it is our opinion that the individual you inquired about is not in violation of South Carolina's dual officeholding prohibition for the reason that the first position he holds no longer exists, legally.
Very truly yours,

Robert W. Brown
Assistant Attorney General

ATTACHMENT
February 1, 1973
Honorable Richard W. Riley

State Senator

Post Office Box 10084

Greenville, South Carolina

Dear Senator Riley:
You have inquired as to whether or not membership on a regional council of government (Ref.: Sec. 14-341, 1962 Code, as amended) is an office within the meaning of Article 2, Section 2, Constitution of South Carolina, relating to the holding of more than one office of honor or profit at the same time.

This Office has previously issued an opinion by Attorney General McLeod (Feb. 28, 1972) that membership on a regional council of government is not an office within the meaning of Article 2, Section 2.

Based on the foregoing, it is the opinion of this Office that the holder of a State office may be appointed to membership on a regional council of government without offending the dual office holding provision of the State Constitution.
Yours very truly,

Joseph C. Coleman
Deputy Attorney General

ATTACHMENT
January 23, 1969
Mr. Carl M. Hust

Executive Director

South Carolina Recreation Commission

Cornell Arms Building—Suite 2-G

Columbia, South Carolina 29202

Dear Mr. Hust:
In reply to your letter of January 22, I advise that Directors of Recreation Commissions are most probably employees rather than officers, and there would, therefore, be no constitutional objection to such individuals occupying another office insofar as the dual officeholding provision of the Constitution is concerned.

If the Recreation Commission which they serve is created by law and the position of Executive Director is created by law, such action would constitute the Director an officer. If the office is not created by statute, however, this conclusion does not apply. For that reason, the qualifying phrase 'most probably' is used herein.

***3** Consequently, it would be necessary to ascertain in each case precisely under what provision of law the Recreation Commission involved is created. I would assume that practically all municipal Recreation Commissions exist by virtue of municipal action and without reference to statutory authority. In such circumstances, the dual officeholding provision is most likely not to be brought into play. Membership in the General Assembly constitutes an office, and such members are precluded from holding another office by specific constitutional provision. The question in each case will thus depend upon the authority under which the Director acts.
Very truly yours,

Daniel R. McLeod
Attorney General

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