

1978 WL 35036 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 10, 1978

\*1 James E. Gonzales, Esq.  
City Attorney  
City of North Charleston  
P. O. Box 5817  
North Charleston, South Carolina 29406

Dear Mr. Gonzales:

You have recently asked the opinion of this Office concerning the validity of Act No. 1768 of the 1972 Acts and Joint Resolutions of South Carolina with respect to provisions of the South Carolina Constitution prohibiting dual officeholding.

Act No. 1768 of 1972 created a common governing commission for the North Charleston District (Special District) and the North Charleston Sewer District (Sewer District). Also, Section 26 of the Act abolished the existing North Charleston Consolidated Public Service District (Existing District).

You have first asked whether the arrangement of one governing commission for two separate subdivisions of government is violative of the dual officeholding provisions of the South Carolina Constitution. Section 38 of 63 Am. Jur. 2d, Public Officers and Employees, states:

A prohibition against the holding by one person of two or more offices at the same time is not violated by the holding of a single office which is formed through the consolidation of two or more offices . . .

It is the opinion of this Office that the General Assembly has validly created a single new governing office, the jurisdiction of which spans two government subdivisions. Such an office is not subject to the dual officeholding restrictions of the South Carolina Constitution.

This determination also answers your last two questions concerning the need for one governing body to have ex officio status. There is no new duty imposed upon an existing office to require that the officer serve ex officio in his new duties, but rather, a single new office has been created. Hence, the dual officeholding restrictions are not applicable.

Therefore, it is the opinion of this Office that the common governing commission for the Sewer District and Special District is not violative of the dual officeholding provisions of the South Carolina Constitution.

Sincerely,

George C. Beighley  
Assistant Attorney General

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