

1975 S.C. Op. Atty. Gen. 14 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 3930, 1975 WL 22228

Office of the Attorney General

State of South Carolina

Opinion No. 3930

January 10, 1975

**\*1 Re: Dual Officeholding—Mayor and Conservation Officer (Game Warden)**

Honorable William R. DuBose

Mayor

Town of Summerton

P. O. Box 161

Summerton, South Carolina 29148

Dear Mayor DuBose:

You have inquired as to whether you would be in violation of the dual officeholding prohibition of the State Constitution should you accept an appointment as a conservation officer while remaining as Mayor.

Article XVII, Section 1A, of the Constitution of South Carolina (1895), provides in part:

‘ . . . But no person shall hold two offices of honor or profit at the same time . . . ’

The definition of ‘public officers’ set forth in Section 50–1, Code of Laws of South Carolina (1962), is enlightening, though not determinative. The term ‘office’ is generally considered to be one created by statute with its duties defined by law and involving the exercise of a portion of the sovereignty. The State Supreme Court has held:

It may be stated as a general rule, fairly deducible from the many cases discussing the question, that a position is a public office when it is created by law, with duties case upon the the incumbent which involve an exercise of some portion of the sovereign power, and in the performance of which the public is concerned, and which also are continuing in their nature, and not occasional or intermittent . . . . Willis v. Aiken County, 203 S.C. 96, 102, 26 S.E.2d 313, 315 (1943), accord, Sanders v. Bellue, 78 S.C. 171, 58 S.E. 762 (1907).

The office of Mayor is, without question, an office within the meaning of the constitutional provision. Ashmore v. Greater Greenville Sewer District, 211 S.C. 77, 44 S.E.2d 88 (1947).

Conversation officers are the law enforcement personnel of the South Carolina Wildlife and Marine Resources Department. Code Section 28–109. Their office is created by statute, its duties prescribed by law, and it involves an exercise of a portion of the sovereignty. Code Sections 28–93 through 28–180. I have enclosed a letter dated January 22, 1965, wherein Attorney General McLeod advised that a game warden is an officer within the meaning of the constitutional provision.

It is, therefore, the opinion of this office that acceptance by you of an appointment as a conservation officer while remaining as Mayor would constitute dual officeholding in violation of the Constitution. As a matter of information, I advise that the State Supreme Court has held that election or appointment and qualification to a second office causes a vacation of the first. State v. Buttz, 9 S.C. 156 (1877), Walker v. Harris, 170 S.C. 242, 170 S.E. 270 (1933).

If I may be of further assistance, please feel free to call upon me.

Very truly yours,

Wade S. Kolb, Jr.  
Assistant Attorney General

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