

1975 S.C. Op. Atty. Gen. 107 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 4035, 1975 WL 22332

Office of the Attorney General

State of South Carolina

Opinion No. 4035

June 17, 1975

\*1 Mr. Hoyt B. Hill, Jr.

Director

Department of Veterans' Affairs

Room 227, Edgar A. Brown Office Building

1205 Pendleton Street

Columbia, South Carolina 29201

Dear Mr. Hill:

By opinion dated May 6, 1964, this Office advised you in response to your inquiry that the position of Service Officer, V.F.W., as identified in the current General Appropriations Act, Item III, Section 77, is an office within the meaning of the constitutional provision of this State relating to dual officeholding. I have reviewed that opinion and hereby withdraw it for the reasons set forth below.

The opinion to which reference is made cited the following definition of an officer:

'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 not continuing and not occasional or intermittent, is a public officer.' [Edge v. Town of Cayce](#), 187 S.C. 172, 197 S.E. 216.

This definition still prevails as the standard criteria by which this problem is to be judged but the application of its principles to the position of Service Officer, V.F.W., D.A.V., the American Legion, etc., was, in my opinion, erroneously applied in the opinion of May 6, 1964.

In the first instance, the duties of the position are not prescribed by law. Such Service Officers are utilized in an advisory capacity and in the presentment of claims on behalf of veterans before the Veterans Administration, and perhaps similar organizations. I do not feel that this is an exercise of the sovereign power. Nor do I believe that the position can be considered other than that of an employment in a function which the State undertakes as a service to veterans.

For the foregoing reasons, it is my opinion that the position of Service Officer, as identified in the portion of the General Appropriations Act for the current year previously referred to, is not an office within the meaning of the dual officeholding provision of the Constitution of this State.

With best wishes,

Very truly yours,

Daniel R. McLeod

Attorney General

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