

1975 S.C. Op. Atty. Gen. 169 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 4092, 1975 WL 22388

Office of the Attorney General

State of South Carolina

Opinion No. 4092

August 22, 1975

*1 The Honorable W. Jerry Fedder
County Attorney
Oconee County
Messrs. Fedder & Derrick
Attorneys at Law
209 N. Townville Street
Seneca, South Carolina 29678

Dear Mr. Fedder:

You have inquired as to the status of one who occupies the positions of mayor of a municipality and member of the Oconee County Aeronautics Commission.

The position of mayor is undoubtedly an office within the meaning of the provision of the Constitution of South Carolina relating to dual officeholding.

The position of member of the Oconee County Aeronautics Commission was created by Act No. 987, approved the 19th day of March, 1968 (68 Acts 2377), now codified as Section 2-417 of the 1962 Code of Laws of South Carolina, as amended. The Commission is composed of a number of members designated by the statutes, with fixed terms of office, without compensation being made for their services. Its chairman is selected from their number. One member of the Oconee County Council shall be appointed by the chairman thereof to serve as a member *ex officio*. Among other authorities, they have the power to acquire real property and rights of way for airport purposes, including the power of condemnation; the power to execute leases and agreements of property of the Commission; and to exercise such powers as may be cumulative to and in addition to powers given under any other law. The Commission is vested with powers generally given by the 'Uniform Airports Act.'

It is my opinion that membership upon such a Commission clearly constitutes an office as contemplated by the dual officeholding provision of the Constitution.

The effect of this is that one who occupies the position of mayor while at the same time holding the position of member of the Aeronautics Commission is in violation of the dual officeholding provision referred to. The effect of acceding to another office while holding a prior office is to cause a vacation of the office first held. The vacation of the office so imposed by law means a vacancy in the sense that such vacancy must be filled; it does not mean that there is a physical abandonment of the office but the holder thereof must continue in office until the vacancy is filled in the manner provided by law. Until such event takes place, the holder continues in a *de facto* capacity and must remain in the office until the vacancy is filled, and his acts and doings in this capacity as a *de facto* officeholder are valid. [Bradford v. Brynes, 221 S.C. 255, 70 S.E.2d 228.](#)

With best wishes,
Cordially,

Daniel R. McLeod

Attorney General

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