

1974 WL 27657 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 4, 1974

**\*1 Re: Town of St. Matthews**

Mr. Lawrence M. Gressette, Jr.  
Messrs. Gressette and Gressette  
Attorneys at Law  
Post Office Box 346  
St. Matthews, South Carolina 29135

Dear Lawrence:

Thank you very much for your letter of February 28.

The position of member of a town council is undoubtedly an office, but I do not think that the Director of the Civil Defense and Disaster Advisory Commission of Calhoun County is an office. The Act pointed out by you creates the Commission and the members of that Commission are, I think, officers. The Director, I presume, is employed under the powers given by Section 2 to 'employ, direct and discharge personnel, including a director of the county program—.'

The term of this individual's office is not fixed by law and he apparently occupies a subordinate position. He does not possess any of the other indicia of an office except to exercise some portion of the sovereignty. The primary thing which he lacks, as I see it, is the fixity of term and statutory designation of duties.

As long as I have been expressing opinions on what is an office and what is an employment, I still am unable to formulate any precise method of judging it. Section 50-1 is apparently the only approach from a statutory definition standpoint. This statute was construed in Sanders v. Belue, cited at the end of that statute. There are many other cases which say one thing or another about what is a public office, but so far as I am concerned, the principle set down in Sanders v. Belue appears to be the beginning point.

The illustrations referred to in your letter show the method of approach which I have followed. An Assistant Superintendent of Education was employed pursuant to the general authority of the school trustees of Fairfield County to 'employ any personnel necessary for the efficient operation of the schools.' The position was not created by statute, its duties were not fixed by statute, nor was its tenure established by statute, and I considered therefore that it was an employment and not an office.

With respect to a member of a selective service board, I have taken the view, as shown by a copy of the opinion enclosed herewith, that this is not a State office, but is an office conferred by presidential appointment. I have taken the further view that federal offices may be held by individuals, except in limited cases, while still holding State offices. The basis for this conclusion is that there is no specific prohibition contained in Article XVII, Section 1(A), or its predecessor provision, directed against the holding of federal offices, whereas other sections of the Constitution prohibit judges, the Governor, etc., not only from holding two offices under the State, but also from holding a State office and any other office under any other power. The result is that where the Constitution prohibits dual officeholding of State and federal offices, it specifically says so, but it does not say that in Article XVII, Section 1(A), or its predecessor. For this reason, I have expressed the view that a person may be a postmaster and at the same time a school trustee, etc. I hope this is correct.

\*2 I have gone to some lengths in explaining this, as I wanted you to have the background for my conclusion that the Civil Defense Director is an employment rather than an office, and therefore the same individual can, in my opinion, serve also as a member of Town Council. He could not, however, be a member of a school board at the same time.

I should point out also that because the Civil Defense agency probably utilizes federal funds, there is a possibility of the application of the Hatch Act. This is administered by the United States Civil Service Commission, and I talked recently with its General Counsel because I have no idea of how the Hatch Act works. Unlike any other federal agency I have ever encountered, he will be glad to express an opinion on a definite state of facts, and it may be worthwhile to investigate that phase. I do not see any involvement myself, as the position does not entail political activity. I am submitting his name and address in case you may want to write him. Because of the frequency of questions I get about Hatch Act application, I talked with him to see if he could confer with representative officials in this State. I am now trying to set up such a meeting with the Director of the State Personnel system.

With best wishes,  
Very truly yours,

Daniel R. McLeod  
Attorney General

1974 WL 27657 (S.C.A.G.)

---

End of Document

© 2019 Thomson Reuters. No claim to original U.S. Government Works.