

1973 S.C. Op. Atty. Gen. 35 (S.C.A.G.), 1973 S.C. Op. Atty. Gen. No. 3461, 1973 WL 20925

Office of the Attorney General

State of South Carolina

Opinion No. 3461

January 22, 1973

***1 Re: Duel Employment**

Honorable Edward E. Saleeby
Attorney at Law
P. O. Box 519
Hartsville, S. C. 29550

Dear Senator Saleeby:

You have requested that this Office advise you as to whether an individual may serve as a member of the Hartsville City Council while being employed by the S. C. Employment Security Commission.

Hartsville has adopted the Council-Manager form of government which provides in pertinent part, Councilmen shall be qualified electors of the City and shall hold no other public office or public employment with the City, County or State . . . Sec. 47–699.23, Code of Laws of S. C. 1962.

As employment with the S. C. Employment Security Commission clearly constitutes public employment within the meaning of the above-entitled Section, it would appear that one so employed could not serve on the Hartsville City Council. A previous opinion from this Office, analogized this situation which you presented to that of involved in the case of [Culbertson v. Blatt, et. al.](#) 194 S.C. 105, 9 S.E. 2d 218 which held that the qualifications of members of the State Senate as Senators is a matter wholly within the jurisdiction of the Senate, citing Art. 3, Sec. 2 of the South Carolina Constitution. As a similar provision it appears that Section 47–699.24, states that the ‘Council shall be the judge of the election and qualifications of its members . . .’ It was felt that the Culbertson case might control and hold that even though an individual was in violation of Sec. 47–699.23 this would not automatically make him ineligible to serve on Council, unless the Council in its capacity as judge of the qualifications of its members held that such an individual was not qualified. A further reading of the Culbertson case (supra) reveals that it was a constitutional provision rather than a statutory provision, and as a constitutional provision it precludes judicial review. The same situation would not be presented with a statutory provision, and should the statute hold that the Council shall be the judge of the qualifications of its members the judiciary would be able to look into the issue and determine if in fact the member was qualified. As Sec. 47–699.23 clearly prohibits other public employment it is the opinion of this Office that an individual may not continue serving as a member of the Hartaville City Council and maintain his employment with the S. C. Employment Security Commission.

You have further inquired as to whether this particular individual may continue his employment with the Employment Security Commission and serve as Assistant Fire Chief with compensation for the City of Hartsville. The position of Assistant fire Chief in not an office within the meaning of Art. 2, cc. 2 of the South Carolina Constitution, and there is no statutory or constitutional prohibition against a public employee holding two positions under public employment under the circumstances which you posed. It is, therefore, the opinion of this office that the individual may hold the position of Assistant Fire Chief, and maintain his employment with the S. C. Employment Security Commission without fear of violating the statutes of the State of South Carolina.

*2 I trust that this has been sufficient in answer to the questions which you posed. If we can be of any further assistance, please do not hesitate to call or write.

Very truly yours,

Timothy G. Quinn
Senior Assistant Attorney General

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