



ALAN WILSON
ATTORNEY GENERAL

December 3, 2020

The Honorable Jerri Ann Roseneau
Beaufort County Clerk of Court
PO Drawer 1128
Beaufort, SC 29901-1128

Dear Ms. Roseneau:

You have requested an opinion of this Office regarding whether it would constitute dual office holding for you to serve as both Beaufort County Clerk of Court and as a board member for the Technical College of the Lowcountry Area Commission.

LAW/ANALYSIS

Dual office holding is prohibited by the South Carolina Constitution, which states:

[n]o person may hold two offices of honor or profit at the same time, but any person holding another office may at the same time be an officer in the militia, member of a lawfully and regularly organized fire department, constable, or a notary public.... The limitation above set forth does not prohibit any officeholder from being a delegate to a constitutional convention.

S.C. Const, art. XVII § 1 A.

The South Carolina Supreme Court explains that an “office” for dual office holding purposes is:

“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 continuing, and not occasional or intermittent, is a public officer.” Sanders v. Belue, 78 S.C. 171, 174, 58 S.E. 762, 763 (1907), “In considering whether a particular position is an office in the constitutional sense, it must be demonstrated that “[t]he power of appointment comes from the state, the authority is derived from the law, and the duties are exercised for the benefit of the public.” Willis v. Aiken County, 203 S.C. 96, 103 26 S.E.2d 313, 316 (1943). “The powers conferred and the duties to be discharged

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with regard to a public office must be defined, directly or impliedly, by the legislature or through legislative authority ..."63C Am Jur.2d Public Officers and Employees § 5 (2009).

Segars-Andrews v. Judicial Merit Selection Commission, 387 S.C. 109, 691 S.E.2d 453 (2010).
Other relevant considerations for an office are:

whether the position was created by the legislature; whether the qualifications for appointment are established; whether the duties, tenure, salary, bond, and oath are prescribed or required; whether the one occupying the position is a representative of the sovereign; among others.

Op. S.C. Attv. Gen., 2013 WL 3243063 (June 17, 2013) (quoting State v. Crenshaw, 274 S.C. 475, 478,266 S.E.2d 61, 62 (1980)).

Our Office has previously advised that a county clerk of court holds an office for dual office holding purposes. See Ops. S.C. Atty. Gen., 2008 WL 903966 (Mar. 6, 2008); 1993 WL 738588 (Mar. 3, 1993). We have also concluded that service on the Area Commission of the Technical College of the Lowcountry would constitute a public office. See Op. S.C. Atty. Gen., 1990 WL 599272 (August 6, 1990). Therefore, it is our opinion that serving in both positions would violate the constitutional prohibition against dual office holding.

CONCLUSION

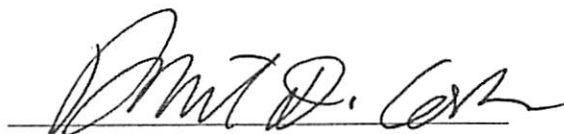
Based on our prior opinions, we believe that serving as both Beaufort County Clerk of Court and as a member of the Technical College of the Lowcountry Area Commission would violate the constitutional prohibition against dual office holding.

Sincerely,



Elinor V. Lister
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General