



ALAN WILSON
ATTORNEY GENERAL

February 22, 2021

Henry M. Laye, III
Board of Voter Registration and Elections of Spartanburg County
PO Box 1287
Spartanburg, SC 29304-1287

Dear Mr. Laye:

You are requesting an opinion from this Office regarding whether it would constitute dual office holding for an individual to serve as both a town council member and on the town's planning 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 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. Atty. 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 determined that a town council member holds an office for dual office holding purposes. See Op. S.C. Atty. Gen., 2013 WL 5291571 (Sept. 9, 2013) (“[t]his Office has advised on numerous occasions that a member of a town or city council holds an office for purposes of the constitutional prohibition against dual office holding.”) We have also consistently opined that a position on a planning commission is an “office of honor or profit.” As this Office stated in a previous opinion:

Title 6, Chapter 29, Article 1 of the South Carolina Code of Laws of 1976 governs the creation of local planning commissions. S.C. Code § 6-29-320 states that the “county council of each county may create a county planning commission.”¹ The powers, qualifications and duties of a local planning commission, as described in Article 1 makes it clear that members exercise some degree of sovereign power of the state, meaning that membership on the Planning Commission constitutes an office within the definition of the Sanders and Crenshaw cases, supra. See S.C. Code § § 6-29-340 - 6-29-380. On numerous occasions, this Office opined that a **member of a county or municipal planning commission holds an office for purposes of dual office holding**. See Ops. S.C. Atty. Gen., November

¹ S.C. Code § 6-29-320 also states that the “city council of each municipality may create a municipal planning commission.”

27, 2007 (City of Mauldin Planning Commission);
May 9, 2007 (Spartanburg Planning Commission);
December 1, 2006 (Myrtle Beach Planning
Commission); April 10, 2006 (Town of Bluffton
Planning Commission); May 8, 2001 (Horry County
Planning Commission); August 3, 2000 (Charleston
County Planning Commission) (emphasis added).

Op. S.C. Atty. Gen., 2013 WL 6831111 (December 12, 2013) (quoting Op. S.C. Atty. Gen., 2011 WL 3346433 (July 19, 2011)). Additionally, the South Carolina Code provides that “[n]o member of a planning commission may hold an elected public office in the municipality or county from which appointed.” S.C. Code Ann. § 6-29-350(B) (1976 Code, as amended).

CONCLUSION

It is our opinion that it would be a violation of constitutional and statutory provisions prohibiting dual office holding for an individual to serve as both a town council member and on the town’s planning commission.

Sincerely,



Elinor V. Lister
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General