

1973 S.C. Op. Atty. Gen. 285 (S.C.A.G.), 1973 S.C. Op. Atty. Gen. No. 3614, 1973 WL 21068

Office of the Attorney General

State of South Carolina

Opinion No. 3614

September 5, 1973

***1 Re: Dual Office Holding**

Honorable C. C. Thomas, Jr.
Clerk of Court
Dillon County Courthouse
Dillon, South Carolina

Dear C. C.:

Thank you for directing your inquiry with regard to dual office holding to me. You have asked whether or not a person may serve as both Clerk of Court and Chairman of the Dillon County Airport Commission at the same time.

Article XVII, Section 1A, of the South Carolina Constitution provides that no person shall hold two offices of honor or profit at the same time. (See also Article VI, Section 3.) The question thus becomes one of determining if a particular position is a public office in the constitutional sense:

It may be stated as a general rule, fairly deducible from the many cases discussing the question, that a position is a public office when it is created by law, with duties cast upon the incumbent which involve an exercise of some portion of the sovereign power, and in the performance of which the public is concerned, and which also are continuing in their nature, and not occasional or intermittent . . . [Willis v. Aiken County](#), 203 S.C. 96, 26 S.E.2d 313 (1943); accord., [Sanders v. Belue](#), 78 S.C. 171, 58 S.E. 762 (1907).

It is apparent that one who serves as Clerk of Court holds an 'office' insofar as the constitutional requirement against dual office holding is concerned. Sections 15-1701 through 15-1787, South Carolina Code of Laws (1962), as amended, provide the statutory bases in support of such a conclusion.

The Dillon County Airport Commission is created by Section 2-295, South Carolina Code of Laws (1962). The Commission members are appointed by the legislative delegation. Their powers and duties and the length of their terms of service are defined by law. Inasmuch as Section 2-296 provides that the Commission has the 'same powers and authorities as those given to counties generally by the Uniform Airports Act,' it is evident that the Commission is empowered thereby to exercise a portion of the sovereign function. In view of these factors, there can be no doubt that membership upon the Dillon County Airport Commission constitutes a 'public office' within the meaning of the above cited authorities.

It is, therefore, the opinion of this office that each of the positions referred to constitutes an 'office' within the purview of the constitutional provisions prohibiting dual office holding and that the same individual can not hold both offices simultaneously without violating the Constitution.

If you have any additional questions with regard to this matter, please let me know. I shall be most happy to assist you. Please give my fondest regards to all of the Dillon Courthouse personnel.

Sincerely,

Dudley Saleeby, Jr.

Assistant Attorney General

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