



The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON  
ATTORNEY GENERAL

September 12, 1996

The Honorable Pickens Williams, Jr.  
Barnwell County Treasurer  
Room 110, County Courthouse  
Barnwell, South Carolina 29812

Re: Informal Opinion

Dear Mr. Williams:

Thank you for your letter of August 27, 1996, inquiring whether you may serve concurrently as both the Barnwell County Treasurer and the Interim County Administrator. Attorney General Condon has asked me to respond.

Article XVII, Sec. 1A of the South Carolina Constitution provides that "... no person shall hold two offices of honor or profit at the same time." For this provision to be contravened, a person concurrently must hold two public offices which have duties involving an exercise of some portion of the sovereign power of the State. Sanders v. Belue, 78 S.C. 171, 58 S.E. 762 (1907). Other relevant considerations are whether statutes, or other such authority, establish the position, prescribe its tenure, duties or salary, or require qualifications or an oath for the position. State v. Crenshaw, 274 S.C. 475, 266 S.E.2d 61 (1980).

Moreover, where a person holding one office of trust or profit is elected or appointed to another such office, and qualifies in the latter capacity, he thereby vacates the first office to which he was elected or appointed, and lawfully holds the second office. Walker v. Harris, 170 S.C. 242, 170 S.E. 270 (1933).

It is clear that the position of county treasurer is a public office having many duties involving an exercise of some portion of the sovereign power of the State. See Secs. 12-45-10 et seq., Code of Laws of South Carolina, 1976, and other various sections throughout Title 12. Accordingly, it is necessary, then, to address whether service as the

The Honorable Pickens Williams, Jr.

Page 2

September 12, 1996

Interim Barnwell County Administrator would constitute an office for the purposes of Article XVII, Section 1A.

This Office has advised previously that one who serves as a county administrator for a county in which the council-administrator form of government has been properly adopted, would hold an office for dual office holding purposes. We have been informed, however, that Barnwell County has adopted the council form of government and that the county administrator's position was established by County Council. Consequently, it is necessary to examine the act of council that created the position, established qualifications for the position, specified the powers, duties, or responsibilities, and so forth, to be able to assess whether that position would be considered an office.

On May 21, 1991, Barnwell County Council enacted Ordinance No. 1991-50 which adopted permanent rules of procedure for the conduct of county business. The powers and duties of the Barnwell County Administrator, which are enumerated in Rule of Procedure No. 3, subsections 3.1 - 3.8, include the following:

[To] be the Chief Administrative Officer of the County, and [to] be responsible to County Council for the proper Administration of all County affairs ... [to] appoint and supervise all appointive officers or employees of the County ... [to] suspend and/or remove any employee for the good of the County... [to] prepare the Annual Operating and Capital Improvements Budgets, submit them to County Council, and be responsible for their administration after adoption ....

A comparison of the powers and duties specified above with those detailed at S.C. Code Ann. § 4-9-630 regarding county administrators in counties that have adopted the council-administrator form of government reveals numerous similarities. As noted above, since this Office has previously held such administrators to be office holders for the purposes of Article XVII, Section 1A, it is my opinion that the position of Barnwell County Administrator is a public office involving an exercise of some portion of the sovereign power of the State. Based on the foregoing, it is my opinion that one who would serve concurrently as Barnwell County Treasurer and as Barnwell County Administrator would most probably contravene the dual office holding prohibitions of the State Constitution. Such being the case, the only remaining issue is whether provisional or interim service as county administrator somehow removes it from the scope of the prohibition. It is my opinion that it would not.

Although in at least one prior opinion of this Office it was held that "the mere assignment of additional duties to an already-existing office would not create a second

The Honorable Pickens Williams, Jr.

Page 3

September 12, 1996

office," such does not appear to be the case at hand. In other words, rather than merely clothing the County Treasurer with additional duties, what is contemplated here is the actual holding of both offices for an indeterminate period of time. Moreover, given the diverse nature of the two positions, the potential for conflicts of interest militates against allowing one person to hold both of these offices no matter how brief such dual service may be. As noted above, the Barnwell County Administrator is appointed by County Council and is responsible to it for the proper administration of all County affairs; however, the County Treasurer is an independently elected official.

[I]t is not the performance, or the prospective right of performance, of inconsistent duties only that gives rise to incompatibility, but the acceptance of the functions and obligations growing out of the two offices.... The offices may be incompatible even though the conflict in the duties thereof arise but on rare occasions... . In any event, the applicability of the doctrine does not turn upon the integrity of the officeholder or his capacity to achieve impartiality. ...

67 C.J.S. Officers Sec. 27. See also Ops. Atty Gen. dated May 21, 1984; May 15, 1989; March 3, 1978; January 19, 1994; and others. It is not difficult to imagine a variety of situations where the duties of the chief executive officer of the county and the officer responsible for the maintenance of county funds could come into conflict.

Based on all of the above, it is my opinion that as Barnwell County Treasurer you should not concurrently serve as the Interim County Administrator. Service in these dual capacities not only places the status of your present office at risk by operation of law, but it also carries the potential to generate frequent conflicts of interest.

This letter is an informal opinion only. It has been written by a designated Deputy Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

Very truly yours,



Zeb C. Williams, III  
Deputy Attorney General

ZCW,III/an