

7927 Liberty



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

March 10, 2005

Lt. Stephen Jenkins
Oconee County Sheriff's Office
415 South Pine St.
Walhalla, South Carolina 29691

Dear Lt. Jenkins:

You have inquired as to whether an individual currently employed with the Oconee County Building Codes Office may simultaneously serve as a reserve officer for the Oconee County Sheriff's Office without violating the dual office provision. A copy of the South Carolina Code governing the building code enforcement officers was provided with your letter. Following a conversation with the Oconee County Building Codes Office, this Office learned that the County of Oconee does not currently employ a building codes enforcement officer and that the individual for which this decision concerns is currently employed as a building codes inspector. The Oconee County Building Codes office provided this Office with a job description to further assist in responding to your letter. We have reviewed this information and accordingly advise that, based upon the information provided us, the position of building codes inspector as described in the job description provided by the Oconee County Building Codes Office is not an office for dual office holding purposes. If that is indeed the position the individual in question occupies, it is our advice that simultaneously holding this position and serving as a reserve officer would not constitute dual office holding.

Law / Analysis

Article XVII, Section 1A of the South Carolina Constitution provides that "no person may hold two offices of honor or profit at the same time ..." with exceptions specified for an officer in the militia, member of a lawfully and regularly organized fire department, constable, or notary public. For this provision to be contravened, a person concurrently must hold two 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 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). Furthermore, "[O]ne who merely performs the duties required of him under an express contract or otherwise, though such persons themselves be public officers, and though the employment be in or about a public work or business, is a mere employee." *Sanders, supra*, 78 S.C. at 174.

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This Office has advised on numerous occasions that reserve police officers are officers for purposes of dual office holding. *See, Ops. S.C. Atty. Gen.* dated February 5, 1988, May 2, 1989 and June 5, 1979.

We now turn to the position of building code inspector. We have been provided a position description by the Oconee County Building Codes office. Such document describes a "building code inspection III" as performing the following duties:

- Performs routine-to-complex inspections of commercial and residential building construction and renovations and mobile home installations for compliance with applicable building (structural, plumbing, mechanical, electrical, accessibility) and related codes and ordinances.
- Prepares inspection reports, prepares and issues notices of correction and stop work orders as necessary.
- Explains, interprets and provides guidance regarding applicable codes and compliance requirements to contractors, engineers, architects, developers, property owners and others.
- Follows up on each case to verify corrections have been made to comply with codes.
- Maintains a variety of logs and records related to inspection and enforcement activities.
- Receives and responds to public inquiries, concerns and complaints regarding assigned cases and general department procedures.
- Assists in processing and issuing permits.
- Assists with E-911 addressing duties as needed.
- Maintains assigned vehicles and equipment.

Apparently, this position requires no oath and is established in no statute or ordinance. We are aware of no term or tenure attached to the position.

Moreover, we have located one prior opinion of this Office, dated August 3, 1964, in which we concluded in a somewhat similar situation that the position of building inspector is not an office for dual office holding purposes. The question presented there was whether simultaneously holding

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the positions of police officer and building inspector created a dual office holding situation. We concluded it did not. Former Attorney General McLeod, in so concluding, stated as follows:

[t]he position of building inspector, on the other hand, is not considered to be an office. This conclusion is reached principally because the nature of the duties are not an exercise of the sovereign power. Additionally, the tenure of the position is not fixed nor an oath of office required.

It is true that the Oconee Inspector III is empowered to issue "stop orders." While this could possibly be construed as the exercise of sovereign power, we rely on the earlier opinion in concluding that such authority is not sufficient to deem the position of Building Inspector III an office. Thus, we are of the opinion, consistent with the previous opinion of former Attorney General McLeod, that an individual may simultaneously occupy the positions of Oconee County Building Inspector III and reserve police officer without contravening the prohibition against dual office holding.

We caution herein that the position of building codes enforcement officer as created by S.C. Code Ann. Section 6-8-10 *et seq.* is not addressed herein. Such position is defined in § 6-8-10 as "a person employed by a public entity who is primarily responsible for the overall inspection *or enforcement* of building code requirements within the jurisdiction of the employer." (emphasis added). Section 6-8-40 states that "[n]o person may practice as a codes enforcement officer in this State unless registered as provided in this chapter." Thus, this position is created by state law. It is, however, unclear from the statute what are the precise parameters of the duties of codes enforcement officer. We have located a Florida Attorney General's opinion which concluded as follows:

[y]ou state that the building official in the instant inquiry is responsible for the administration and implementation of the city's building construction code, including the issuance of permits, licensing and certificates of occupancy The city code thus vests the building official with the responsibility of administering the provisions of the city code relating to building construction, including the authority to issue permits and certificates of occupation. In carrying out such responsibilities, he or she is not acting as a designee or deputy of a city officer; rather, the city code directly imposes such sovereign powers of the city on the building official.

See, Fla. AGO 2004-07 (February 13, 2004). Likewise, as noted, § 6-8-10 places upon the building codes enforcement officer the *primary* responsibility "for the overall inspection or enforcement of applicable building code requirements" in the hands of the building codes enforcement officer. Thus, if the individual in question is holding this position rather than the position of "Building Inspector III" a different conclusion may result.

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Conclusion

There is no violation of the constitutional prohibition against dual office holding to simultaneously occupy the positions of Building Inspector III of Oconee County and a reserve police officer. However, a different conclusion may result if the individual in question is holding the position of building codes enforcement officer as authorized by § 6-8-10 *et seq.*

Very truly yours,



Robert D. Cook
Assistant Deputy Attorney General

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