



HENRY McMASTER
ATTORNEY GENERAL

August 30, 2010

A. Glenn Greene, Esq.
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PO Box 1658
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Dear Mr. Greene:

We received your letter requesting an opinion of this Office concerning dual office holding. You asked “whether or not a state employee who works in the education field would be a dual office holder if he is also a member of State Government.” After further clarification, your specific question is whether serving as athletic director and head football coach for Dillon County School District #2 and being a member of the State House of Representatives would be a violation of dual office holding. You also asked us to point out any differences in the way this dual office holding analysis is done in comparison to the dual office holding violation found when the Mayor of the Town of Latta had to resign when he took a job with the Dillon County Sheriff’s Department.

This opinion will address prior opinions and caselaw regarding dual office holding for mayors, law enforcement officers, state employees in education and members of the General Assembly.

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, 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.” 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). “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.” Id., 58 S.E. 762, 763. 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).

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Mayor & Law Enforcement Officer

In numerous prior opinions of this Office, we have concluded that a mayor holds an office for purposes of dual office holding. See, e.g., Ops. S.C. Atty. Gen., October 29, 2009; February 17, 2009; January 25, 1999; January 17, 1983.

Additionally, in numerous prior opinions of this Office, we have concluded that a deputy sheriff holds an office for purposes of dual office holding. See, e.g., Ops. S.C. Atty. Gen., July 30, 2007; March 3, 2004; June 11, 1992; September 24, 1982; February 23, 1979.

Hence, it would be a clear violation of dual office holding for one to serve as town mayor while working as a deputy sheriff. Both positions exercise some portion of the sovereign power of the state; therefore, both positions would be considered offices for the purposes of dual office holding.

School Football Coach & State Representative

With regards to members of the General Assembly, this Office has advised that members would be considered office holders for dual office holding purposes. Ops. S.C. Atty. Gen. dated June 27, 1997; May 27, 1995; September 4, 1992 and January 11, 1991. One must also consider Article III, Section 11 of the State Constitution, which provides that “[e]ach house shall [be the] judge of the election returns and qualifications of its own members” Any issue as to dual office holding which would affect a member of the General Assembly would be resolved by the House of which the affected person is a member. Id. See, Op. S.C. Atty. Gen., June 27, 1997.

To determine whether an athletic director or head football coach would be considered an officer for purposes of dual office holding, one must consider whether such a position involves exercising any portion of the sovereign power of the State. The court in Sanders v. Belue explained that there is a generally accepted distinction between an official who exercises the sovereign power of the state and one who is simply an employee that does not hold an office. Op. S.C. Atty. Gen., May 27, 2003 (citing Sanders, 78 S.C. 171 (1907)). It appears that athletic directors or coaches in the public schools are simply employees, not charged with duties involving an exercise of any part of the sovereign power of the State. Similarly, this Office has held on numerous occasions that the position of a public school teacher is not an office within the meaning of the constitutional prohibitions regarding dual office holding, but is merely a position of employment. Op. S.C. Atty. Gen., August 8, 1972.

Therefore, a court would likely find that one may serve as a member of the General Assembly and be a football coach and athletic director for a public school without violating the dual office holding provision.

Master-Servant Conflict of Interest

The South Carolina Supreme Court explained in McMahan v. Jones that “[n]o man in the public service should be permitted to occupy the dual position of master and servant.” McMahan v. Jones, 94 S.C. 362 (1913). This Office is not a fact-finding entity, but based on previous conversations, it is the understanding of this Office that the State Representative here has the authority to appoint

members of the county school board. The members of the county school board then appoint members of the local school board, who in turn allocate funds to Dillon schools, including the athletic departments. Hence, one could argue that the individuals appointed by the State Representative to the school board may be perceived as indirectly setting his salary as football coach and athletic director. While this Office is confident that no actual impropriety exists, it is the opinion of this Office that the State Representative should take all steps necessary to avoid the appearance of impropriety.

Conclusion

Consistent with our prior opinions, it is the opinion of this Office that simultaneously serving as a state or county employee, specifically a school football coach or athletic director, and being a member of the General Assembly is not a violation of the dual office holding provisions.

The conclusion above is distinguished from our prior opinion that serving as Town Mayor and taking a job with the Sheriff's Department as a law enforcement officer would be a violation of the dual office holding provisions. See, e.g., Op. S.C. Atty. Gen., February 23, 1979. A law enforcement officer, such as a sheriff's deputy, clearly holds an office for dual office holding purposes. Similarly, a mayor clearly holds an office for dual office holding purposes. On the other hand, simply serving as a state or county employee does not constitute holding an office for dual office holding purposes. Ops. S.C. Atty. Gen., May 27, 2003; August 8, 1972.

A school football coach or athletic director would be classified as an employee, having no supervisory authority or sovereign power of the State. Hence, even though members of the General Assembly are considered to hold an office for the purposes of dual office holding, there would be no violation.

Sincerely,

Henry McMaster
Attorney General



By: Leigha Blackwell
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General