



ALAN WILSON
ATTORNEY GENERAL

January 25, 2011

Stephen D. Vincent
Kershaw County Treasurer and
Delinquent Tax Collector
PO Box 622
515 Walnut Street
Camden, SC 29020

Dear Mr. Vincent:

We received your letter requesting an opinion of this Office concerning dual office holding. You asked “whether the duly elected Kershaw County Treasurer and Delinquent Tax Collector may concurrently serve as the interim Kershaw County Administrator without violating the dual office holding prohibition of the State constitution or other applicable laws.”

Law/Analysis

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, 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).

One should note that “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.” Op. S.C. Atty. Gen., September 12, 1996 (citing Walker v. Harris, 170 S.C. 242, 170 S.E. 270 (1933)).

This Office has previously held 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.” Ops. S.C. Atty. Gen., July 30, 2007; January 22, 1993; September 12, 1996; S.C. Code §12-45-10 et seq. This Office

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has also consistently opined that a county tax collector holds an office for dual office holding. Ops. S.C. Atty. Gen., October 3, 2003; July 13, 1988 ; March 10, 1980; April 30, 1979. Since the position of county treasurer, or in this instance the combined role of County Treasurer and Delinquent Tax Collector, would likely be considered an office for dual office holding purposes, it is necessary to address whether serving as interim Kershaw 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. Op. S.C. Atty. Gen., September 12, 1996. The request letter mentions that Kershaw county operates under the council-administrator form of government.

The opinion written by this Office on September 12, 1996 specifically addresses whether one may serve as county treasurer and **interim** county administrator; I will enclose the opinion for your convenience. Consistent with the prior opinion, this Office concludes that the dual office holding prohibition is still applicable in this instance even though service as county administrator is for an interim period of time. However, we acknowledge that “the mere assignment of additional duties to an already-existing office would not create a second office.” Op. S.C. Atty. Gen., September 12, 1996. This Office is not a fact finding entity; “investigations and determinations of facts are beyond the scope of an opinion of this Office and are better resolved by a court.” Ops. S.C. Atty. Gen., September 14, 2006; April 6, 2006. Nevertheless, from information provided in the request letter, the County Treasurer does not appear to merely be clothed with additional duties; there is an actual holding of both offices for an indeterminate period of time.

Conclusion

Consistent with our prior opinions, it is the opinion of this Office that simultaneously holding the positions of County Treasurer and Interim County Administrator would constitute dual office holding in contravention of Article XVII, Section 1A of the South Carolina Constitution. Each position has continuing duties involving an exercise of some portion of the sovereign power of the State. Additionally, service in these dual capacities carry the potential to generate frequent conflicts of interest.

Sincerely,



Leigha Blackwell
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General