

March 6, 2008

Ms. Debra Fickling
841 Shipes Bluff Road
Blackville, South Carolina 29817

Dear Ms. Fickling:

In a letter to this office you indicated that you are currently a salaried employee of Barnwell County and are interested in seeking a county-wide elected office, that of clerk of court, in the upcoming election. You have questioned the legalities of your continuing employment with the county while seeking this elective position as long as you do not campaign during your work schedule.

Generally, I am unaware of any State statutory provision which prohibits a county employee from running for elected office. See: Ops. S.C. Atty. Gen. dated September 29, 2006, June 12, 1992 and January 29, 1980. However, consistent with these opinions, we must caution that despite the absence of a State law prohibiting an employee from seeking elected office, some counties or county agencies may have their own policies and regulations that limit or prohibit an employee from engaging in such activities. Therefore, we suggest you seek guidance from your employer as to whether such a policy exists.

As to any dual office holding concerns, 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, a member of a lawfully and regularly organized fire department, a constable, or a 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). Prior opinions of this office have concluded that a clerk of court is an officer for dual office holding purposes. See, e.g., Ops. Atty. Gen. dated March 3, 1993 and September 5, 1973. However, dual office holding concerns only arise upon the assumption of an office after election and inasmuch as you are presently a salaried employee of Barnwell County, which I assume would not qualify as an office for dual office holding purposes, and I assume that you would give up the

Ms. Fickling
Page 2
March 6, 2008

salaried position upon election as clerk of court, there would be no dual office holding concerns at issue.

If you desire an analysis of whether your campaigning would violate this State's Ethics Act, you must contact the State Ethics Commission. The State Ethics Commission is specifically granted the authority to interpret the Ethics Act.

If there are any other questions, please advise.

Sincerely,

Henry McMaster
Attorney General

By: Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Deputy Attorney General