

7552 Liberty



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

July 24, 2003

Chief Douglas W. Graffagnino
Seneca Police Department
Post Office Box 4773
Seneca, South Carolina 29679

Dear Chief Graffagnino:

You have requested an advisory opinion from this Office concerning dual office holding. You indicate that three years ago, the Seneca Police Department created the position of Victims' Services Coordinator in order to provide the services required of law enforcement that are set forth in both the South Carolina Code Section 16-3-1505, et seq., and the Victims' Bill of Rights in Article I, Section 24 of the South Carolina Constitution. You further note that your current Victims' Services Coordinator has filed to run in a special election for a vacant seat on the Westminster City Council. Specifically, you seek an opinion "as to whether the position of Victims' Services Coordinator is considered an office, as it pertains to the South Carolina Constitution prohibition against dual office holding."

Law/Analysis

Article XVII, Section 1A of the South Carolina Constitution states 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, constable, or a notary public. As concluded by former Attorney General Daniel McLeod, in an opinion dated April 26, 1977, "[t]o determine whether a position is an office or not depends upon a number of circumstances and is not subject to any precise formula." The South Carolina Supreme Court, though, has held that 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). "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. Conversely, one who merely performs the duties required of him by persons employing him under an express contract or otherwise, though such persons be themselves public officers, and though the employment be in or about a public work or business, is a mere employee." Id., 78 S.C. at 174. Other relevant considerations, as identified by the Court, are whether statutes or other authority establish the

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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).

This Office has advised on numerous occasions that a member of a city or town council would be considered an officer for dual office holding purposes. See, as representative of those numerous opinions, Ops. S.C. Atty. Gen. dated July 19, 2001; Apr. 12, 1998; June 12, 1995; Feb. 4, 1994; July 23, 1993. Therefore, the question is whether the position of Victims' Services Coordinator for the Seneca Police Department would, likewise, be considered an office.

While the statutes mandating the provision of victims' services with respect to law enforcement agencies appear to contemplate the creation of positions having as their sole purpose the coordination and administration of such services, we are aware of no provision of statutory law which specifically creates such a position. The dedication of funds provided to municipalities for the purpose of providing services to crime victims' is authorized by Section 14-1-211 of the Code of Laws. S.C. Code Ann. §14-1-211. The statute imposes a mandatory one hundred dollar surcharge for all convictions in obtained in general sessions court and a twenty-five dollar surcharge for all convictions obtained in magistrate's or municipal court, with the exception of misdemeanor traffic offenses. S.C. Code Ann. §14-1-211(A)(1). Subsection 14-1-211(B) specifies how these surcharges are to be collected and designates how this revenue is to be used by the jurisdiction which collects it. Such enactment reads in relevant part as follows:

(B) The revenue collected pursuant to subsection (A)(1) must be retained by the jurisdiction which heard or processed the case and paid to the city or county treasurer, for the purpose of providing services for the victims of crime, including those required by law. Any funds retained by the county or city treasurer pursuant to subsection (A)(1) must be deposited into a separate account for the exclusive use of all activities related to the requirements contained in this provision. For the purpose of funds allocation and expenditure, these funds are a part of the general funds of the city or county. These funds must be appropriated for the exclusive purpose of providing victim services as required by Article 15 of Title 16; specifically, those service requirements that are imposed on local law enforcement, local detention facilities, prosecutors, and the summary courts. First priority must be given to those victims' assistance programs which are required by Article 15 of Title 16 and second priority must be given to programs which expand victims' services beyond those required by Article 15 of Title 16. These funds must be used for, but are not limited to, salaries, equipment that includes computer equipment and internet access, or other expenditures necessary for providing services to crime victims.

While this section specifies that these funds are to be used for salaries of those who carry out the requirements of this provision, it does not, for the purposes of determining whether such a position is an office in the context of dual office holding, specifically create a position for such purposes. Certainly, however, a municipality is authorized to create such a position, as the Seneca

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Police Department has done. Moreover, Article 15 of Title 16 imposes specific victims' services requirements on local law enforcement divisions, but does not specify how, and by whom, those services are to be administered. S.C. Code Ann. 16-3-1505, et seq. We have also been informed that there is no city ordinance that has specifically created the position of Victims' Services Coordinator at the Seneca Police Department. Accordingly, it appears that there is neither a statute nor any other authority that creates such a office, prescribes its tenure, duties or salary, or require qualifications or an oath for the position. State v. Crenshaw, *supra*.

Based upon the foregoing authorities, this Office is of the opinion that the Victims' Services Coordinator for the Seneca Police Department does not hold an office for dual office holding purposes. It appears that, pursuant to the language of Sanders v. Belue, *supra*, this position would, for dual office holding purposes, be considered an employee rather than an officer. Even though the employment of the Victims' Services Coordinator involves public responsibilities which are required by the state Constitution and Code of Laws, the criteria enunciated in Sanders v. Belue and State v. Crenshaw are not met in this instance. It would therefore not be a violation of the constitutional provision prohibiting dual office holding for one person to simultaneously serve as a member of the City Council of Westminster and as the Victims' Service Coordinator for the Seneca Police Department.

Very truly yours,



Robert D. Cook
Assistant Deputy Attorney General