



The State of South Carolina  
**OFFICE OF THE ATTORNEY GENERAL**

CHARLES M. CONDON  
ATTORNEY GENERAL

April 29, 2002

R. Allen Young, Esquire  
Mount Pleasant Town Attorney  
Post Office Box 745  
Mount Pleasant, South Carolina 29465

**Re: Informal Opinion**

Dear Mr. Young:

You have asked whether the Senior Planner of Mt. Pleasant holds an office for dual office holding purposes. You seek clarification of an advice letter I wrote to you on April 2, 2002 because I apparently confused the positions of Director of Planning and Development and Senior Planner. I regret the confusion my earlier letter created and will attempt herein to clarify my conclusions.

My earlier advice letter concluded that the Director of Planning and Development constituted an office for dual office holding purposes. This was based primarily upon the fact that the Mt. Pleasant ordinance (§ 31.081) states that the Director "or his or her appointed designee shall administer and enforce the provisions of this code relating to the Subdivision Regulations, Zoning Code, and the Municipal Impact Fees ... ." Also mentioned in the opinion was the fact that the Director serves at the pleasure of the Town Council and is appointed. Based upon this analysis, I believe, the Director is an officer for dual office holding purposes.

Where I confused the situation is with respect to the position of Senior Planner. Apparently, that is the position for which you were inquiring. According to the information which you have provided, the Senior Planner reports directly to the Director of Planning and Development. The duties of the Senior Planner are as follows:

- Prepares, facilitates, presents and recommends elements of the Comprehensive Plan to citizens, the Planning Commission and Town Council;
- Oversees the plan review process of proposed development projects through final approval;
- Assists private developers, engineers, architects, contractors and citizens in understanding and interpreting Town land use ordinances;

*Request Letta*

Mr. Young  
Page 2  
April 29, 2002

- Reviews proposed development plans for consistency with local zoning and other land use ordinances and regulations; enforces zoning regulations;
- Compiles and inventories data and applies formulas related to population, transportation, economic issues, fiscal analysis, and geophysical characteristics of the Town;
- Prepares special studies and reports and assists the Director in developing or revising Town land use ordinances and regulations; prepares annual planning report;
- Prepares annexation petitions and assists all involved in communication process;
- Responds to public questions on planning and zoning issues and disseminates information and data to public and media;
- Pursues external funding possibilities and prepares grant proposals; coordinates grant projects and prepares final project reports;
- Serves as technical resource on Town Boards and Commissions;
- Coordinates planning process with other Town departments as needed;
- Reviews and updates the Town's Development Impact Fee Ordinances;
- Coordinates activities with departmental staff, provides instructions in related areas; reviews work for accuracy and completeness;
- Performs other duties as required.

Based upon the foregoing enumerated duties, the Senior Planner would be an employee, rather an officer.

None of the duties listed above would constitute an exercise of the sovereign powers of the State or a political subdivision thereof necessary to constitute an office. See, the April 2, 2002 advice letter to you setting forth the criteria for constituting an office.

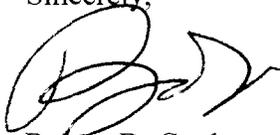
However, I must caveat this conclusion somewhat based upon the language of the Ordinance creating the position of Director of Planning and Development. Such ordinance in § 31.081 (B) allows the powers of administration enforcement of Subdivision Regulations, Zoning Code and the Municipal Impact Fees to be exercised by the Director of Planning and Development's "appointed designee." The Job Description of the Senior Planner states that the "Incumbent may be asked to perform other duties as required ... ." It is thus not clear from the Job Description of the Senior Planner whether such person is required to perform enforcement duties in lieu of the Director who apparently is the Senior Planner's supervisor. If such duties are performed, the Senior Planner position could be construed to constitute an office as well. You, as Town Attorney, are in a better position to make this determination.

I trust this response clarifies my earlier Informal Opinion to you.

Mr. Young  
Page 3  
April 29, 2002

This letter is an informal opinion only. It has been written by a designated Assistant Deputy Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General and not officially published in the manner of a formal opinion.

Sincerely,

A handwritten signature in black ink, appearing to be 'RDC', written over a faint circular stamp or watermark.

Robert D. Cook  
Assistant Deputy Attorney General

RDC/an