



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON
ATTORNEY GENERAL

April 2, 2002

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

Dear Mr. Young:

You have asked whether one who holds the position of Director of Planning and Development for the Town of Mt. Pleasant and wishes to serve on the Awandaw Town Council would be dual office holding.

Article XVII, § 1A of the South Carolina Constitution provides that "... no person shall hold two offices of honor or profit at the same time." 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 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 determined on numerous occasions that one who serves as a member of a town council would hold an office in the constitutional sense. See, e.g., Op. Atty. Gen., April 12, 1998; June 12, 1995; February 4, 1994.

The position of Director of Planning and Development for the Town of Mt. Pleasant is also known as the Zoning Administrator and the Director of Planning and Engineering or Administrative Officer. The position is created by city ordinance which notes that "The Director of Planning and Development will be appointed by Council and will serve at the pleasure of Council." Section 31.081 sets forth the "duties and powers" of the Director of Planning and Development as follows:

- (A) The Director of Planning and Development shall be responsible for coordinating and directing the planning, zoning and engineering functions for the town.
- (B) The Director of Planning and Development (also know as the Zoning Administrator, Director of Planning and Engineering or Administrative

Officer) 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, and he or she shall have such powers and perform such duties as may be provided for him or her in these ordinances, or as provided in any other town or state ordinances/statutes.

In addition, a more specific list of duties of the Director of Planning and Development is set forth in the Job Description which you have forwarded. According to the "essential functions" contained therein, the Director is responsible for

- 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;
- 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.

The question of whether a Director of Planning and Development is an officer for dual office holding purposes has not been squarely addressed in previous opinions of this Office. In previous opinions, however, we have concluded that a city planner does not hold an office. Op. Atty. Gen.,

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March 23, 1978. Likewise, we have opined that the Zoning Administrator is not an officer for dual office holding purposes.

In this instance, it is significant that the ordinance creating the position characterizes the Director as an "officer" and the selection of the Director by Town Council as an "appointment." Such characterizations may be given weight in determining whether the position is an "office." See, 63C Am.Jur.2d, Public Officers and Employees, § 7.

What is also significant is that the Director is given the authority to "administer and enforce" the provisions of the City Code relating to Subdivision Regulations, Zoning Code and Municipal Impact Fees. Typically, we have advised that one who holds a position whose duties include that of a zoning enforcement officer is an officer for dual office holding purposes. Op. Atty. Gen., January 6, 1998 (1998 WL 62947) [position of Code Enforcement Administrator exercises "one of the traditional sovereign powers of the State: police power."]

The case you have presented is a close one and is not free from doubt. However, in light of the fact that the Director of Planning and Development appears to exercise a portion of the sovereign power by virtue of his authority to enforce the City's planning and zoning ordinances, it is my opinion that the position would most likely constitute an office. In any event, I believe it would be advisable to avoid the appearance of a conflict by not holding both positions simultaneously.

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,



Robert D. Cook
Assistant Deputy Attorney General

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