



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON
ATTORNEY GENERAL

July 25, 2002

J. Scott Bannister, Chief of Police
Westminster Police Department
P. O. Box 399
Westminster, South Carolina 29693

Dear Chief Bannister:

You note that the City of Westminster "currently employs an individual in a dual capacity as the Victims' Advocate and Court Clerk. You ask two questions regarding this situation: first, can an individual be employed in a dual capacity as a victims' advocate and court clerk; and, second, may the clerk of court office be housed within the police department building?"

Law / Analysis

The first issue is whether the simultaneous holding of the positions of Victims' Advocate and Court Clerk constitutes dual office holding under the South Carolina Constitution. 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 oath for the position. State v. Crenshaw, 274 S.C. 475, 266 S.E.2d 61 (1980).

This Office has previously concluded that the clerk of a municipal court is an office. See, August 18, 1981 and opinions referenced therein. The question then becomes whether the position of "Victims' Advocate" constitutes an office. In Art. I, § 24, the South Carolina Constitution establishes a Victims' Bill of Rights which enumerates those rights constitutionally guaranteed to victims of crime. The constitutional amendment is implemented by statutory enactment, found at S.C. Code Ann. Sec. 16-3-1505, et seq. This implementing legislation specifies the manner in which the rights constitutionally guaranteed to crime victims shall be provided and identifies the entities responsible for providing such rights. These entities are law enforcement agencies, prosecuting agencies, summary courts, departments and agencies having custody or custodial supervision of persons accused, convicted or adjudicated delinquent of committing offenses, the Office of the

Robert L...

Chief Bannister
Page 2
July 25, 2002

Attorney General, the Department of Corrections, the Department of Probation, Parole, and Pardon Services, the Board of Juvenile Parole, and the Department of Juvenile Justice. Throughout South Carolina, a number of positions have been created to provide services to the victims of crime in this State.

Apparently, in the situation you reference, the Clerk of the Municipal Court of Westminster serves as "victims' advocate" to provide services to victims for the City of Westminster. Accordingly, no dual office holding problem is created thereby inasmuch as the individual in question would be holding only one office – that of Municipal Court Clerk. See Ashmore v. Greater Greenville Sewer District, 211 S.C. 77, 44 S.E.2d 88 (1947). Thus, we need not address the issue of whether a so-called "victims' advocate" might constitute an "office" in other circumstances. There is no dual office holding problem here.

The more difficult question is whether there is created an inherent conflict of interest by an individual holding the position of Municipal Clerk of Court and as part of his or her duties also serving as Victims' Advocate. Our Supreme Court has recognized that "every public officer is bound to perform the duties of his office honestly, faithfully and to the best of his ability, in a manner so as to be above suspicion of irregularity, and to act primarily for the benefit of the public." O'Shields v. Caldwell, 207 S.C. 194, 35 S.E.2d 184 (1945). Public employees must be above reproach and avoid even the appearance of a conflict of interest in carrying out their duties.

In this case, there would be at least the appearance of a conflict of interest in acting as Municipal Court Clerk and also serving as Victims' Advocate for the Town of Westminster. A clerk of court, when performing the duties of clerk, is an arm of the court itself. See, Thornton v. Atlantic Coast Line R. Co., 196 S.C. 316, 13 S.E.2d 442, 446 (1941), quoting Chafee and Co. v. Rainey, 21 S.C. 11, 18 ["The clerk is the officer of the court, and any mere ministerial act he does by the order of the court is the act of the court itself."] The municipal court is part of the unified judicial system created by Article V of the State Constitution. See Op. Atty. Gen., August 13, 1996 and Op. Atty. Gen., August 27, 1996. The court is constitutionally required to remain "neutral and detached" in the performance of its exclusively criminal functions, such as the issuance of warrants. See, Shadwick v. City of Tampa, 407 U.S. 345, 92 S.Ct. 2119, 32 L.Ed.2d 738 (1972). While the Clerk of the Municipal Court may not be a "judicial officer" in the technical sense inasmuch as the Clerk is answerable to the City Administrator, see Op. Atty. Gen., August 27, 1996, still the Clerk, as an arm of the Municipal Court, must maintain the appearance of neutrality.

Where the Clerk of Court of Westminster, whose duties relate almost exclusively to the administration of the municipal court, also performs the duties of Victims' Advocate, it could be alleged that an inherent conflict of interest exists in such a relationship. A municipal court possesses only criminal jurisdiction. Clearly, the Victims' Advocate for the Town would serve victims of crime in cases coming before a municipal court whose clerk is one and the same individual. In such instance, even if there is not an actual conflict, there is the appearance of a conflict. Accordingly, I would advise against the same individual performing both functions. You may thus wish to

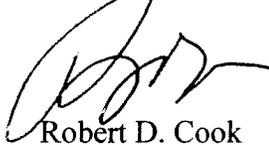
Chief Bannister
Page 3
July 25, 2002

establish a separate position of Victims' Advocate or have another individual perform such duties so that the conflict may be avoided.

Your second question relates to whether the Clerk's Office can be housed within the police department building. It is my understanding that this is a somewhat common practice in South Carolina, particularly in small towns. I am aware of no prohibition concerning the practice. Again, obviously, the functions of law enforcement and the judiciary must remain separate and distinct. However, I know of no prohibition against housing these functions in the same building.

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

RDC/an