



ALAN WILSON  
ATTORNEY GENERAL

October 24, 2013

Chief H. Harold Brown  
Elgin Police Department  
PO Box 277  
Elgin, SC 29045

Dear Chief Brown:

This Office received your request for an opinion on two issues regarding dual office holding. Each issue and its analysis follows.

**LAW/ANALYSIS:**

**I. Can an appointed official such as the Chief of Police also serve as another appointed official such as the town Zoning Administrator?**

The South Carolina Constitution provides that “no person may hold two offices of honor or profit at the same time. This limitation does not apply to officers in the militia, notaries public, members of lawfully and regularly organized fire departments, constables, or delegates to a constitutional convention.” S.C. Const. art. IV § 3.

The South Carolina Supreme Court explains that an “office” for dual office holding purposes is:

“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.” *Sanders v. Belue*, 78 S.C. 171, 174, 58 S.E. 762, 763 (1907). “In considering whether a particular position is an office in the constitutional sense, it must be demonstrated that “[t]he power of appointment comes from the state, the authority is derived from the law, and the duties are exercised for the benefit of the public.” *Willis v. Aiken County*, 203 S.C. 96, 103 26 S.E.2d 313, 316 (1943). “The powers conferred and the duties to be discharged with regard to a public office must be defined, directly or impliedly, by the legislature or through legislative authority...” 63C Am Jur.2d Public Officers and Employees § 5 (2009).

*Segars-Andrews v. Judicial Merit Selection Commission*, 387 S.C. 109, 691 S.E.2d 453 (2010). “Other relevant considerations [as to whether a position is a public office] include: ‘whether the position was

created by the legislature; whether the qualifications for appointment are established; whether the duties, tenure, salary, bond, and oath are prescribed or required; whether the one occupying the position is a representative of the sovereign; among others.” See Op. S.C. Atty. Gen., June 17, 2013 (2013 WL 3243063) (quoting *State v. Crenshaw*, 274 S.C. 475, 478, 266 S.E.2d 61, 62(1980))

A police chief is a public officer. We opined in Op. S.C. Atty. Gen., May 19, 2011 (2011 WL 2214066) that:

This Office has advised on many occasions that a police officer or police chief would be considered an office holder for dual office holding purposes. See, Ops. S.C. Atty. Gen., October 14, 2010; February 4, 1994; November 2, 1994; September 8, 1992. Moreover, in Edge v. Town of Cayce, 187 S.C. 171, 197 S.E. 216 (1938), the South Carolina Supreme Court concluded that a chief of police was a public officer.

The issue is whether a Zoning Administrator is also an officer for dual office holding purposes. We have found in prior opinions that a Zoning Administrator was an officer. We based this upon the ordinance creating the position calling the Zoning Administrator an “officer;” the position being appointed; and the position being given the authority to “administer and enforce” the provisions of the City Code relating to Subdivision Regulations, Zoning Code, and Municipal Impact Fees, which include the duties of a zoning enforcement officer. See Ops. S.C. Atty. Gen., May 6, 2005 (2005 WL 1383351) (Town of Hollywood Planning and Zoning Administrator office holder); April 2, 2002 (2002 WL 735353) (Mt. Pleasant Zoning Administrator office holder); September 6, 2005 (2005 WL 2250214) (Jasper County Planning and Zoning Coordinator).<sup>1</sup>

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<sup>1</sup> We have found in the past that a Zoning Administrator was not a public officer. See Op. S.C. Atty. Gen., October 26, 1972 (1972 WL 25472). We based this on the premise that the position of Zoning Administrator “is not established by State law, and contains none of the prerequisites of a ‘public office.’” However, this is no longer good persuasive authority. The Hollywood, Mt. Pleasant, and Jasper County Zoning Administrators were granted duties that were an exercise of the sovereign power of the State. Additionally, the South Carolina Local Government Comprehensive Planning Enabling Act of 1994 was passed after we issued that opinion. Section 6-29-950 provides that:

(A) The governing authorities of municipalities or counties may provide for the enforcement of any ordinance adopted pursuant to the provisions of this chapter by means of the withholding of building or zoning permits, or both, and the issuance of stop orders against any work undertaken by an entity not having a proper building or zoning permit, or both. It is unlawful to construct, reconstruct, alter, demolish, change the use of or occupy any land, building, or other structure without first obtaining the appropriate permit or permit approval. No permit may be issued or approved unless the requirements of this chapter or any ordinance adopted pursuant to it are complied with. It is unlawful for other officials to issue any permit for the use of any land, building, or structure, or the construction, conversion, demolition, enlargement, movement, or structural alteration of a building or structure without the approval of the zoning administrator. A violation of any ordinance adopted pursuant to the provisions of this chapter is a misdemeanor. In case a building, structure, or land is or is proposed to be used in violation of any ordinance adopted pursuant to this

According to the Operating Policies of the Town of Elgin that you provided to our office, “the Town Council will appoint the Municipal Clerk, the Municipal Attorney, the Municipal Judge, the Zoning Administrator, Members of the Planning and Zoning Commission, the Zoning Board of Adjustment, and the Town Election Commission...”

Section 8.1 of the Town of Elgin Ordinances that you provided to us states:

The designated Zoning Administrator is duly charged with the authority to administer and enforce the provisions of this Ordinance.

The Zoning Administrator shall accept and examine all applications for construction, land use or reuse, and shall issue permits where such applications are in accord with the provisions of this Ordinance and applicable building codes. He shall direct parties in conflict with this Ordinance, and cause to be kept records and files of any and all matters referred to him.

If the Zoning Administrator shall find that any one of the provisions of this Ordinance is being violated, he shall notify in writing the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it. He shall order discontinuance of illegal use of land, buildings or structures; removal of illegal buildings or structures or of illegal additions, alterations, or structural changes; discontinuance of any illegal work being done; and shall take any other action authorized by this Ordinance to ensure compliance with or to prevent violation of its provisions.

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chapter, the zoning administrator or other appropriate administrative officer, municipal or county attorney, or other appropriate authority of the municipality or county or an adjacent or neighboring property owner who would be specially damaged by the violation may in addition to other remedies, institute injunction, mandamus, or other appropriate action or proceeding to prevent the unlawful erection, construction, reconstruction, alteration, conversion, maintenance, or use, or to correct or abate the violation, or to prevent the occupancy of the building, structure, or land. Each day the unlawful erection, construction, reconstruction, alteration, conversion, maintenance, or use continues is considered a separate offense.

(B) In case a building, structure, or land is or is proposed to be used in violation of an ordinance adopted pursuant to this chapter, the zoning administrator or other designated administrative officer may in addition to other remedies issue and serve upon a person pursuing the activity or activities a stop order requiring that entity stop all activities in violation of the zoning ordinance.

The Elgin Zoning Administrator is "appointed" by the Town Council and is given the authority to "administer and enforce" the zoning ordinances, issue permits, and take action to ensure compliance with or to prevent violation of the city ordinances, which are exercises of the sovereign power of the State. Therefore, the position is a public office.

Since the positions of police chief and zoning administrator both constitute offices, it would likely constitute dual office holding under the South Carolina Constitution for an individual to serve as both.

- II. Can an elected official such as a Mayor or Council Member also serve as another appointed official in the same town?

Section 5-7-180 of the South Carolina Code is very specific when it states that "[e]xcept where authorized by law, no mayor or councilman shall hold any other municipal office or municipal employment while serving the term for which he was elected." S.C. Code Ann. § 5-7-180 (1976 Code, as amended). Accordingly, a mayor or council member may not serve as another city official.

#### CONCLUSION

In conclusion, this Office believes that the law is as follows:

1. Since the positions of police chief and zoning administrator both constitute offices, it would likely constitute dual office holding under the South Carolina Constitution for an individual to serve as both.
2. A mayor or council member may not serve as another city official.


Please be aware that this is only an opinion as to how this Office believes a court would interpret the law in this matter.

Sincerely,



Elinor V. Lister  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Solicitor General