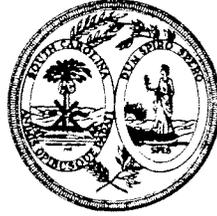


6934 Liberty



The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON  
ATTORNEY GENERAL

October 11, 2000

Vernetha G. Glenn  
Post Office Box 1298  
Santee, South Carolina 29142

**RE: Informal Opinion**

Dear Ms. Glenn:

Thank you for your letter inquiring whether a dual office holding situation would exist if, while serving as the Juvenile Arbitration Director for Orangeburg, Calhoun and Dorchester Counties, you also served as a part-time associate municipal judge. For the reasons discussed below, it is my opinion that your additional service as a part-time associate municipal judge would not violate the state constitution's prohibition against dual office holding.

As you know, Article XVII, Section 1A of the South Carolina Constitution, provides 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 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." Id., 78 S.C. at 174. Other relevant considerations, as identified by the Court, are whether statutes, or other 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).

*Respectfully,*

Ms. Vernetha G. Glenn

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Previous opinions of this Office have concluded that municipal court judges, including part-time and associate judges, are officers for dual office holding purposes. *See, e.g., Ops. Atty. Gen.* dated June 22, 1998 and May 30, 1997. Therefore, it must be determined whether serving as the Director of Juvenile Arbitration for Orangeburg, Calhoun and Dorchester Counties would likewise constitute an office.

According to the information you provided, as a Juvenile Arbitration Director you are responsible for planning, organizing and administering all functions of the Juvenile Arbitration Program. Specific principal duties include coordinating all cases for arbitration, assigning cases to arbitrators, developing and conducting arbitrator training programs and reporting all budget spending on a quarterly basis. Reviewing the criteria usually present in an office, as discussed in the second paragraph of this letter, it appears that Juvenile Arbitration Director is a position of employment rather than an office. Moreover, prior opinions of this Office that have addressed positions with similar duties have consistently held that the most important criterion, that of an exercise of a portion of the sovereign power of the state, appears to be lacking. *See, Ops. Atty. Gen.* dated June 24, 1996 (Edgefield County Emergency Preparedness Director not an office); September 4, 1992 (Director of the Clarendon County Public Service Commission not an office); September 29, 1983 (Director of the Greenville County Law Enforcement Support Department not an office); Therefore, based upon the reasoning and conclusions of these earlier decisions, it is my opinion that your additional service as a part-time associate municipal judge would not violate the state constitution's prohibition against dual office holding.

Finally, municipal court judges are subject to the Code of Judicial Conduct, as found in Rule 33 of the Supreme Court Rules. Due to the possible appearance of a conflict of interest by having a County Juvenile Arbitration Director serving as an associate municipal judge, it might be prudent to obtain an advisory opinion on the ramifications of the Code of Judicial Conduct from the Advisory Committee on Standards of Judicial Conduct. You may contact the Committee by writing to the Commission on Judicial Conduct; 1015 Sumter Street; Calhoun Building, Room 111; Columbia, SC 29201.

I trust this information is responsive to your inquiry and that you will not hesitate to contact me if I can be of additional assistance. This letter is an informal opinion only. It has been written by a designated Deputy Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not been personally

Ms. Vernetha G. Glenn

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scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I am

Sincerely yours,

A handwritten signature in cursive script that reads "Zeb Williams".

Zeb C. Williams, III  
Deputy Attorney General

ZCW/an