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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

April 9, 1997

The Honorable Ronald G. Carmack
Member, New Ellenton Town Council
P.O. Drawer 479
New Ellenton, South Carolina 29809

Re: Informal Opinion

Dear Mr. Carmack:

Your recent opinion request has been referred to me for reply. You have inquired as to whether an individual may serve simultaneously as mayor of the City of New Ellenton and as a Tax Enforcement Officer for Aiken County.

Article XVII, Section 1A of the State 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, member of a lawfully and regularly organized fire department, constable, or notary public. For this provision to be contravened, a person concurrently must hold two public 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 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 concluded on numerous occasions that one who serves as a mayor of a municipality would hold an office for dual office holding purposes. See opinions dated November 2, 1994; July 28, 1993; February 25, 1992; and September 21, 1989, among many others.

This Office has never specifically addressed whether a county code enforcement officer would be considered an office holder for dual office holding purposes. Therefore, the duties of a code enforcement officer must be analyzed to determine whether this position would be considered an office.

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The appointment of county code enforcement officers is authorized by S.C. Code Ann. § 4-9-145 (Supp. 1996). Pursuant to this statute, the governing body of the county may appoint and commission as many code enforcement officers as may be necessary for the proper security, general welfare, and convenience of the county. Code enforcement officers are vested with all the powers and duties conferred by law upon constables in addition to the duties imposed upon them by the governing body of the county. Id. These code enforcement officers are authorized to exercise their powers on all private and public property within the county. Id. Code enforcement officers commissioned under this statute are not permitted to perform a custodial arrest. Id. However, they are authorized to issue an ordinance summons to cite a violation of a county ordinance. S.C. Code Ann. § 56-7-80 (Supp. 1996).

Based on the foregoing description of the powers of a code enforcement officer, it is apparent that the officer exercises one of the traditional sovereign powers of the State: police power. While code enforcement officers are not given the power to perform a custodial arrest, they are given many of the other powers traditionally accorded to peace officers in this state, including the power to issue an ordinance summons on behalf of the county. Accordingly, I am of the opinion that a code enforcement officer for the Aiken County Tax Collector's Office would be considered an officer for dual office holding purposes.

In conclusion, since the positions of mayor of the City of New Ellenton and code enforcement officer for the Aiken County Tax Collector's Office are both considered officers for dual office holding purposes, if an individual simultaneously serves as both, Article XVII, Section 1A of the State Constitution would be violated.

This letter is an informal opinion only. It has been written by a designated assistant attorney general and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kindest regards, I remain

Very truly yours,



Paul M. Koch

Assistant Attorney General