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The State of South Carolina



Office of the Attorney General

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March 10, 1993

Ms. Jan Pate
Administrative Assistant to the City Manager
City of Florence
Drawer AA, City-County Complex
Florence, South Carolina 29501

Dear Ms. Pate:

As you were advised, your letter of February 9, 1993, to the Ethics Commission has been referred to our Office for response. You had asked whether the Public Works Director for the City of Florence could serve simultaneously on the South Carolina Wildlife and Marine Resources Commission ("Commission") without contravening the dual office holding prohibitions of the state Constitution.

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 a 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 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).

The Commission is the governing body of the South Carolina Wildlife and Marine Resources Department, appointed by the Governor by and with the advice and consent of the Senate. S.C. Code Ann. § 50-3-10. Section 50-3-20 provides for terms "of office" of six years and until members' successors have been appointed and qualified. For six of the seven Commission members, residence in a particular congressional district is

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required by § 50-3-10. Compensation, in the form of compensation per annum as the General Assembly may provide and reimbursement of official expenses, is provided for in § 50-3-40. No oath is required to be taken by these statutes.¹

Duties to be exercised by the Commission are found in §§ 50-3-50, 50-3-60, 50-3-110, 50-3-170, 50-3-310, 50-3-315, 50-3-316, 50-3-510, and others. Clearly, these powers, duties, and responsibilities exercised by the Commission involve an exercise of a portion of the sovereign power of the State, particularly in its role of enforcing the various wildlife and marine laws of the State, selecting officers to do so, investigating game and fish conditions and making reports to the General Assembly, establishing regulations, and the like.

Considering all of the foregoing, it is the opinion of this Office that a member of the South Carolina Wildlife and Marine Resources Commission would hold an office for dual office holding purposes.

You have furnished this Office a job description for the Public Works Director of the City of Florence. We understand from the Personnel Director of the City that the position was not created by ordinance, that the incumbent did not take an oath prior to assuming the position, that he is compensated by salary, and that he is an "at will" employee. The Public Works Director manages nine divisions making up the Department, being responsible for budgetary matters and overall daily work activities of the divisions. He also coordinates public works/administrative activities with the City Manager and City Council and provides technical assistance to city staff as requested. These duties do not appear to involve an exercise of sovereign power. This position would be one of employment rather than an office, in our opinion.

Based on the foregoing, it is our opinion that the Public Works Director of the City of Florence could serve simultaneously on the South Carolina Wildlife and Marine Resources Commission without contravening the dual office holding prohibitions of the state Constitution.

¹As a practical matter, members would subscribe an oath when they receive documents relative to their appointment from the Secretary of State, who would issue their commissions upon receipt of the document containing the oath. See Art. VI, § 5 of the state Constitution.

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With kindest regards, I am

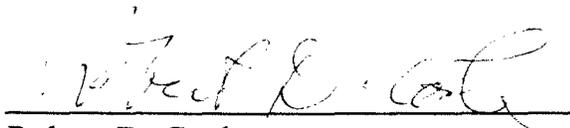
Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/an

REVIEWED AND APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions