

The State of South Carolina



Office of the Attorney General

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
TELEPHONE: 803-734-3970
FACSIMILE: 803-253-6283

March 3, 1993

The Honorable Doug H. McFaddin
Clerk of Court of Clarendon County
Clarendon County Courthouse
Manning, South Carolina 29102

Dear Mr. McFaddin:

By your letter of February 25, 1993, you have advised that you were recently elected to the office of Clerk of Court of Clarendon County; you are also a member of the Forestry Commission Board in Clarendon County and ask whether such concurrent service would constitute dual office holding.

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).

This Office has previously advised that a member of a county forestry commission would be considered an office holder. Enclosed is an opinion dated December 14, 1987, to that effect. You have advised that the duties exercised by the Clarendon County commission are also derived from the same statutes examined as to the Sumter County commission; thus, the enclosed opinion would be applicable to members of the Clarendon County commission.

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Similarly, this Office has previously advised that a clerk of court would be considered an office holder. Enclosed is a copy of an opinion dated September 5, 1973, stating that conclusion. Therefore, holding both positions simultaneously would most probably be considered to be dual office holding.

I trust that the foregoing has satisfactorily responded to your inquiry. Please advise if you need additional assistance or clarification.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/an

REVIEWED AND APPROVED BY:

Robert D. Cook

Robert D. Cook
Executive Assistant for Opinions