



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

June 28, 1995

The Honorable Grady A. Brown
Member, House of Representatives
213 N. Main Street
Bishopville, South Carolina 29010

RE: Informal Opinion

Dear Representative Brown:

You have sought an opinion as to whether an individual may serve simultaneously as a deputy coroner and as a member of a county council without violating the dual office holding prohibitions of the South Carolina Constitution.

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, 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 advised on numerous occasions that one who would serve as a member of a county council would be an office holder for dual office holding purposes. See, as an example of the numerous opinions, Op. Att'y Gen. dated July 28, 1993, a copy of which is enclosed.

The Honorable Grady A. Brown
Page 2
June 28, 1995

Similarly, this Office has advised previously that a deputy coroner would be considered an office holder for dual office holding purposes. See Op. Att'y Gen. dated October 13, 1992, a copy of which is enclosed.

Thus, I am of the opinion that one who would serve simultaneously as a member of a county council and as a deputy coroner would most probably be considered to be holding two offices in violation of the dual office holding prohibitions of the South Carolina Constitution.

If a person holds one office (deputy coroner, for example) on the date he assumes a second office (county council, for example), both offices falling within the provisions of Article XVII, Section 1A of the Constitution, he is deemed to have vacated the former office. However, that person may continue to perform the duties of the previously held office as a de facto officer, rather than de jure, until a successor is duly selected to complete his term of office (or to assume his duties if the term of service is indefinite). See Walker v. Harris, 170 S.C. 242 (1933); Dove v. Kirkland, 92 S.C. 313 (1912); State v. Coleman, 54 S.C. 282 (1898); State v. Buttz, 9 S.C. 156 (1877).¹ I would advise that any actions taken by a de facto officer in relation to the public or third parties will be considered as valid and effectual as those of a de jure officer unless or until a court should declare such acts void or remove the individual from office. See, for example, State ex rel. McLeod v. Court of Probate of Colleton County, 266 S.C. 279, 223 S.E.2d 166 (1976); State ex rel. McLeod v. West, 249 S.C. 243, 153 S.E.2d 892 (1967); Kittman v. Ayer, 3 Strob. 92 (S.C. 1848); 67 C.J.S. Officers §276.

I trust that the foregoing has satisfactorily responded to your inquiry. Please advise if clarification or additional assistance should be needed.

This letter is an informal opinion only. It has been written by a designated Senior 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.

¹A de jure officer is "one who is in all respects legally appointed and qualified to exercise the office." 63 Am.Jur.2d Public Officers and Employees §495. A de facto officer is "one who is in possession of an office, in good faith, entered by right, claiming to be entitled thereto, and discharging its duties under color of authority." Heyward v. Long, 178 S.C. 351, 183 S.E. 145, 151 (1936); see also Smith v. City Council of Charleston, 198 S.C. 313, 17 S.E.2d 860 (1942) and Bradford v. Byrnes, 221 S.C. 255, 70 S.E.2d 228 (1952).

The Honorable Grady A. Brown
Page 3
June 28, 1995

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Senior Assistant Attorney General

Enclosures