



ALAN WILSON  
ATTORNEY GENERAL

December 12, 2013

Mr. Steve Willis  
Lancaster County Administrator  
P. O. Box 1809  
Lancaster, South Carolina 29721

Dear Mr. Willis:

Attorney General Alan Wilson has referred your letter of July 31, 2013 to the Opinions section for a response. The following is our understanding of your question and the opinion of this Office concerning the issue based on that understanding.

**Issue:** May a mayor be appointed to a county planning commission without violating the dual office holding prohibition of the South Carolina Constitution?

**Short Answer:** No, a mayor may not be appointed to a county planning commission because a member of a planning commission and a mayor would likely be found by a court to both be offices of "honor or profit."

**Law/Analysis:**

By way of background, Article VI, Section 3 and 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, a constable, or a notary public. Article III, Section 24 of the South Carolina Constitution specifically prohibits members of the General Assembly from holding any other office or position of trust or profit. For these provisions 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). The Sanders case states:

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. Conversely, one who merely performs the duties required of him by persons employing him under an express contract or otherwise, though such persons be themselves public officers, and though the employment be in or about a public work or business, is a mere employee.

Id. at 174, 763. Other relevant considerations include "whether the position was created by the legislature; whether qualifications for appointment are established; whether duties, tenure, salary, bond and oath are prescribed or required; [and] whether one occupying [the] position is representative of sovereign [power or duties]." State v. Crenshaw, 274 S.C. 475, 266 S.E.2d 61 (1980) (citing State ex rel. Carson v. Wood, 154 W.Va. 397, 175 S.E.2d 482 (1970)). The only exception to dual office holding prohibition would be if the person holds the second office "ex officio." Op. S.C. Atty. Gen., 2012 WL 4459270 (September 19, 2012) (citing Ashmore v. Greater Greenville Sewer District, 211 S.C. 77, 92, 44 S.E.2d 88, 95 (1947)). In other words, if the person holds the second office by virtue of holding the first office.

This Office has consistently opined the position of mayor is an "office of honor or profit" for dual office holding purposes. See, e.g., Op. S.C. Atty. Gen., 2012 WL 1154553 (March 27, 2012); 2005 WL 1383351 (May 6, 2005); 2002 WL 399636 (January 23, 2002); 1989 WL 406185 (September 21, 1989); 1983 WL 18200 (September 15, 1983); 1981 WL 158097 (September 29, 1981); 1980 WL 120787 (July 24, 1980); 1977 WL 36997 (December 16, 1977).

This Office has also consistently opined a position on a planning commission is an "office of honor or profit" for dual office holding purposes. As this Office stated in a previous opinion:

Title 6, Chapter 29, Article 1 of the South Carolina Code of Laws of 1976 governs the creation of local planning commissions. S.C. Code § 6-29-320 states that the "county council of each county may create a county planning commission." The powers, qualifications and duties of a local planning commission, as described in Article 1 makes it clear that members exercise some degree of sovereign power of the state, meaning that membership on the Planning Commission constitutes an office within the definition of the Sanders and Crenshaw cases, supra. See, S.C. Code §§ 6-29-340 - 6-29-380. On numerous occasions, this Office opined that a **member of a county or municipal planning commission holds an office for purposes of dual office holding**. See, Ops. S.C. Atty. Gen., November 27, 2007 (City of Mauldin Planning Commission); May 9, 2007 (Spartanburg Planning Commission); December 1, 2006 (Myrtle Beach Planning Commission); April 10, 2006 (Town of Bluffton Planning Commission); May 8, 2001 (Horry County Planning Commission); August 3, 2000 (Charleston County Planning Commission) (emphasis added).

Op. S.C. Atty. Gen., 2011 WL 3346433 (July 19, 2011).

Please note an officeholder may give up the first office to hold the second office, but if he takes the second office while in office, he forfeits the first office. His service in the first office while in dual offices would be de facto until that position is replaced. Op. S.C. Atty. Gen., 2012 WL 4459271 (September 13, 2012) (citing Ops. S.C. Atty. Gen., July 28, 2003; July 13, 1995).

**Conclusion:** A mayor may not be appointed to a county planning commission because a member of a planning commission and a mayor would both likely be found by a court to be offices of "honor or profit" for dual office holding purposes. However, this Office is only issuing a legal opinion. Until a court or the legislature specifically addresses the issues presented in your letter, this is only an opinion on how this

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Office believes a court would interpret the law in the matter. If it is later determined otherwise or if you have any additional questions or issues, please let us know.

Sincerely,



Anita Smith Fair  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Solicitor General