

# 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

May 16, 1989

Michael J. Cavanaugh, Executive Director  
South Carolina Department of Probation,  
Parole, and Pardon Service  
Post Office Box 50666  
Columbia, South Carolina 29250

Dear Mr. Cavanaugh:

By your letter of May 1, 1989, you have advised that the South Carolina Department of Probation, Parole, and Pardon Services has a Probation and Parole Agent III, presently assigned as a Public Service Employment Coordinator, who was elected to a city council. He qualified to serve on the city council on April 27, 1989. In this regard you have asked whether the dual office holding prohibitions of the Constitution of the State of South Carolina would be contravened if the individual were to hold both positions simultaneously. We concur with the conclusion in the memorandum attached to your inquiry that a dual office holding problem appears to exist in this instance.

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 opined on numerous occasions that one who is elected to and serves on a city council would hold an office for dual office holding purposes. See, for examples, Ops. Atty. Gen. dated March 29, 1985; January 31, 1984 (copy enclosed); August 23, 1983; and July 8, 1982.

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Likewise, this Office has opined on several occasions that a probation officer would hold an office for dual office holding purposes. See Ops. Atty. Gen. dated March 13, 1985 (copy enclosed); July 11, 1984 (agent in charge of a county probation office, is an officer for dual office holding purposes); December 16, 1964 (probation officer holds an office); September 27, 1982 (probation officer holds an office); September 27, 1982 (probation officer holds an office); July 21, 1981 (probation officer holds an office).

As to a Probation and Parole Agent III, you have advised our Office that the state job specification for that position (class code 5464) includes all the duties of a probation officer pursuant to Section 24-21-280 of the South Carolina Code of Laws (1976), which includes making arrests and issuing warrants and citations pursuant to Sections 24-21-300 and 24-21-450 of the Code; both of these activities clearly involve an exercise of sovereign power.

You have further advised that a Probation and Parole Agent III is a special function agent who can be assigned to different positions. One of those positions is called "public service employment co-ordinator" and does not outwardly appear to include duties involving an exercise of sovereign power. However, you advise that all Probation and Parole Agent III personnel have all of the powers of a probation agent, including the power to make arrests and issue warrants and citations. The Probation and Parole Agent III could at any time be required, by the Department of Probation, Parole, and Pardon Services, to exercise these powers. In addition, this agent participates in the Police Officer Retirement System. He has been issued an agent's identification card and carries a badge or shield identifying him as a Public Service Employment Coordinator. He is subject to recertification annually, as any agent is. For these reasons, it appears that the opinions previously rendered by this Office with respect to probation officers in the context of dual office holding would be applicable in this instance.

Based on the foregoing, this Office concurs with the conclusion reached by the Department of Probation, Parole and Pardon Services that a Probation and Parole Agent III would most probably run afoul of the dual office holding prohibitions if he were to serve simultaneously on a city council.

With kindest regards, I am

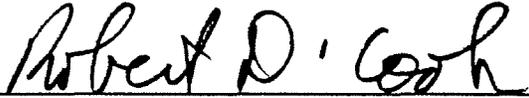
Sincerely,

*Patricia D. Petway*  
Patricia D. Petway  
Assistant Attorney General

PDP:sds  
Enclosures

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REVIEWED AND APPROVED BY:



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ROBERT D. COOK  
EXECUTIVE ASSISTANT FOR OPINIONS