

The State of South Carolina



Office of the Attorney General

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ATTORNEY GENERAL

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November 10, 1988

C. Dennis Aughtry, Esquire
Richland County Attorney
Post Office Box 192
Columbia, South Carolina 29202

Dear Mr. Aughtry:

You have advised that you are presently serving as County Attorney for Richland County. Due to the resignation of the Richland County Administrator, the Richland County Council has expressed a desire to temporarily add additional duties to the duties imposed upon the Richland County Attorney, those additional duties being those generally undertaken by the County Administrator until the position is filled by Richland County Council. You asked whether your assumption of these additional duties would contravene the dual office holding prohibitions of the State Constitution.

Article XVII, § 1A of the South Carolina Constitution provides that "... no person shall hold two offices of honor or profit at the same time." 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).

By an opinion of this Office dated May 5, 1981, we advised that the Richland County Attorney would hold an office for dual office holding purposes. Similarly, we have advised, by an opinion dated May 30, 1979, that a county administrator would hold an office for dual office holding purposes; copies of these opinions are enclosed herewith. Thus, one who would actually hold both positions simultaneously would most probably contravene the dual office holding prohibitions of the State Constitution.

Mr. Aughtry
Page 2
November 10, 1988

You advised that you will not actually assume the position of Richland County Administrator; instead, you will remain as Richland County Attorney, assuming additional duties. You further advise that you will receive no increase in salary for the assumption of these additional duties. It is the opinion of this Office that the mere assignment of additional duties to an already-existing office would not create a second office. As succinctly stated in 63A Am.Jur.2d Public Officers and Employees § 70,

A prohibition against the holding by one person of two or more offices at the same time is not violated by the holding of a single office ... which has been clothed with added powers or burdened with additional duties, even though such powers and duties have been withdrawn from another office. ...

See also 67 C.J.S. Officers § 27; Sparling v. Refunding Board; 189 Ark. 189, 71 S.W.2d 182 (1934); State v. Florida State Turnpike Authority, 80 So.2d 337 (Fla. 1955); Clay County v. Stone, 208 Tenn. 1, 343 S.W.2d 863 (1961); cf., Ashmore v. Greater Greenville Sewer District, 211 S.C. 77, 44 S.E.2d 88 (1947).

We trust that the foregoing has satisfactorily responded to your inquiry. If we may provide clarification or additional assistance, please advise.

With kindest regards, I am

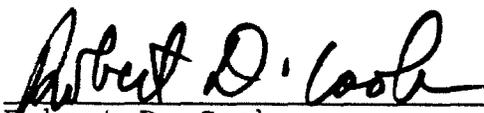
Sincerely,

Patricia D. Petway
Patricia D. Petway
Assistant Attorney General

PDP/an

Enclosures

REVIEWED AND APPROVED BY:


Robert D. Cook
Executive Assistant for Opinions