



ALAN WILSON
ATTORNEY GENERAL

May 2, 2014

Priscilla Cooper, Chairperson
Williamsburg County Election Commission
203B N. Brooks St.
Kingstree, SC 29556

Dear Ms. Cooper,

This letter responds to your May 2, 2014 phone call in which you asked whether an individual concurrently serving on both the Williamsburg County Election Commission and as Mayor of Greeleyville, violates Article XVII, Section 1A's prohibition on dual-office holding. As indicated in the attached opinions, we believe that it does.

Article XVII, Section 1A of the South Carolina Constitution explains, "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." This provision is violated when a person concurrently holds two public offices with duties involving an exercise of some portion of the sovereign power of the State. Sanders v. Belue, 78 S.C. 171, 174, 58 S.E. 762, 763 (1907). In determining whether an office is public, and thus whether its' occupant constitutes a public officer, South Carolina Courts have explained: "[o]ne 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." Id., 58 S.E. 762-63. Other relevant considerations for such a determination include: "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, 478, 266 S.E.2d 61, 62 (1980).

In previous opinions from this Office, we have advised that a mayor holds an office for purposes of Article XVII, Section 1A's prohibition on dual-office holding.¹ We have also

¹ See Op. S.C. Atty. Gen., 2013 WL 6831111 (December 12, 2013) ("This Office has consistently opined the position of mayor is an 'office of honor or profit' for dual office holding purposes."); Op. S.C. Atty. Gen., 2012 WL 1154553 (March 27, 2012) ("This Office has issued numerous opinions concluding that one who serves as the mayor of a municipality holds an office for purposes of the constitutional prohibition against dual office holding."); Op. S.C. Atty. Gen., 2012 WL 989298 (March 16, 2012) ("In numerous opinions of this Office we have concluded that a mayor holds an office for purposes of dual office holding."); Op. S.C. Atty. Gen., 2010 WL 3505053 (August 30, 2010) ("In numerous opinions of this Office we have concluded that a mayor holds an office for purposes of dual

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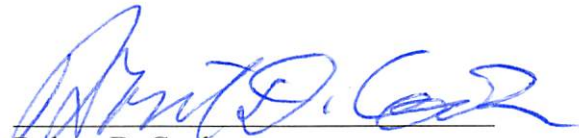
advised that an individual serving on a county election commission holds an office for purposes of dual-office holding.² In fact this Office, in a 1984 opinion, specifically noted that a position with the Williamsburg County Election Commission is an office for purposes of Article XVII, Section 1A's prohibition on dual-office holding. See Op. S.C. Atty. Gen., 1984 WL 249811 (January 24, 1984) (concluding that service on both the Williamsburg County Board of Education and the Williamsburg County Election Commission meant the individual holding both offices violated the prohibition on dual office holding). As a result, it is the opinion of this Office that an individual concurrently serving as both a mayor, and as a member of a county election commission, does so in violation of Article XVII, Section 1A's prohibition on dual-office holding.

Regards,



Brendan McDonald
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General

office holding."); Op. S.C. Atty. Gen., 2009 WL 2844884 (August 13, 2009) ("Numerous opinions of this office have concluded that a mayor is an officer for dual office holding purposes."); Op. S.C. Atty. Gen., 1959 WL 10343 (June 6, 1959) ("The position of Mayor is undoubtedly that of an office within the meaning of our State Constitutional dual office holding provision.").

² See Op. S.C. Atty. Gen., 2009 WL 1968601 (June 4, 2009) ("This office has repeatedly determined that positions on county election commission boards are offices for dual office holding purposes); Op. S.C. Atty. Gen., 2006 WL 1877117 (June 19, 2006) ("This Office, on numerous occasions, advised that an individual serving on a local election commission or voter registration board is an officer for dual office holding purposes."); Op. S.C. Atty. Gen., 2006 WL 1578566 (May 18, 2006) ("This office has advised previously that members of county voter registration boards and members of county election commissions would both be considered office holders for purposes of dual office holding."); Op. S.C. Atty. Gen., 1982 WL 189441 (September 24, 1982) ("[T]his Office has previously determined that members of election commissions hold offices within the meaning of the dual office holding provisions of the Constitution.").