

The State of South Carolina



Office of the Attorney General

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November 10, 1986

Frank Harrison, Esquire
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Dear Frank:

You have asked this Office to clarify an opinion written by me dated October 6, 1986. Apparently you are concerned with the application of Section 23-11-50 of the Code. This provision requires that where a coroner acts as sheriff in a vacancy situation, he is entitled to the fees and emoluments of the sheriff. Apparently you question our original conclusion that where the coroner acts as sheriff in this situation, he is not violating Article XVII, Section 1A of the Constitution which forbids dual office holding. As I understand it, it is your conclusion that since Section 23-11-50 authorizes the payment to the coroner of the fees and emoluments of the sheriff when he is acting as sheriff, the coroner is thus not authorized to receive his compensation as coroner because such would lead to a dual office holding situation.

We disagree. As I mentioned to you in our telephone conversation, Section 23-11-50 makes the coroner the ex officio sheriff where there is a vacancy in the office of sheriff. The State Supreme Court has repeatedly held that an officer who is serving ex officio in another position is not violating the dual office holding provision of the State Constitution. Former Attorney General McLeod in a previous opinion best summarized the Supreme Court's holdings in the context of a statute which required the Mayor of Charleston to serve on the South Carolina Tricentennial Commission. In a June 11, 1966 opinion, former Attorney General McLeod stated:

Irrespective of this view, however, ex officio membership upon the commission

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which you, as mayor of Charleston, occupy, renders such membership compatible with your office of mayor, and there is, therefore, no infringement of any constitutional or statutory provision of law. The case cited below and the cases cited therein make it clear that ex officio membership upon a board or commission is recognized as valid in all respects by the law of this State and other jurisdictions. If the ex officio membership has reasonable relation to the duties of the principal office, there is no violation of the constitutional provision that no person shall hold two offices of honor or profit at the same time. It appears clear that the object of the Tricentennial Commission is closely related to the duties of the office of mayor of Charleston in view of the historic part which the City of Charleston has played in the founding of this State. The founding of this State could hardly be celebrated without direct reference to the City of Charleston.

Moreover, in an opinion of this Office dated March 1, 1979, it was also stated in the context of a situation where the Probate Judge of Barnwell County served as Master-In-Equity pursuant to an act of the General Assembly:

The effect of Act 105 is analogous to the situation where an executive or legislative official is by legislation an ex officio [by virtue of his office] member of a separate but related board or commission. E.g. an act providing that a mayor is a member of a regional public service district. It has been held that such situations do not constitute dual office holding. Ashmore v. Greater Greenville Sewer District, 211 S.C. 77, 44 S.E.2d 88 (1947); Welling v. Clinton-Newberry Natural Gas Authority, 221 S.C. 417, 71 S.E.2d 7 (1952); 1966 Ops. Atty. Gen., No. 2069, p. 163. Also see Section 14-24-10 which allows mayors to perform certain judicial functions. 1975 Ops. Atty. Gen., No. 4012, p. 84.

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This Office certainly has no problem in concluding that there is a rational relationship between the offices of sheriff and coroner sufficient to conclude that in a situation where the coroner serves as the ex officio sheriff, no dual office holding situation is created.

You also express concern about the fact that dual compensation as required by Section 23-11-50 in itself creates a dual office holding situation. Your concern is answered by the case of State v. Green, 52 S.C. 520 (1897). On page 525 and 526 of that case it was noted that in the situation where the probate judge served as the ex officio public guardian, the official, in addition to having separate and distinct duties and jurisdiction from the office of probate judge, was paid a separate compensation from his compensation as probate judge. The State Supreme Court in that case concluded that there was no dual office holding situation created. There the court noted that service as public guardian by the probate judge "is merely incidental to the office of probate judge, and does not create another office."

In our recent phone conversation you indicate that you express strong disagreement with our opinion dated October 6, 1986. Of course, this Office respects the legal opinions of the county attorney and defers to them particularly in local matters. As we mentioned in our October 6 letter to Sheriff Keown, this is primarily a local matter and it would be a matter for the determination by the county as to exactly what benefits should be received. Thus, we have every confidence that you will be able to advise the county as to its obligations with respect to the compensation of Sheriff Keown.


With kindest personal regards, I remain

Very truly yours,


Charles H. Richardson
Assistant Attorney General

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REVIEWED AND APPROVED BY:



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