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The State of South Carolina



Office of the Attorney General

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April 29, 1985

The Honorable Addison G. Wilson
Senator, District No. 23
606 Gressette Building
Columbia, South Carolina 29202

Dear Senator Wilson:

You have asked whether one individual may serve simultaneously as a member of a city council and as a county veterans service officer without violating the dual office holding prohibitions of the State Constitution. It is the opinion of this Office that one person holding both positions concurrently would most probably hold two offices in violation of the prohibition, as specifically concluded in Opinion No. 58, dated August 11, 1960.

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).

This Office has determined on numerous occasions that a member of a city council holds an office for dual office holding purposes. See Ops. Atty. Gen. dated August 11, 1960 and

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January 31, 1984 (enclosed); July 8, 1982; September 7, 1982;
June 18, 1982; and many others.

Likewise, this Office has concluded that a county service officer would also hold an office. See Ops. Atty. Gen. No. 58 dated August 11, 1960; No. 1609 dated January 16, 1964; No. 1986 dated March 1, 1966; and April 12, 1985. See also Opinions No. 77-364, dated November 1, 1977 and No. 2698 dated July 14, 1969; Section 25-11-40, Code of Laws of South Carolina (1976). Copies of these opinions are enclosed.

You requested that this Office clarify an apparent inconsistency in an opinion dated June 17, 1975, concluding that the position of Service Officer, V.F.W., was not an office for dual office holding purposes and revoking an opinion dated May 6, 1964 (enclosed), which reached the opposite conclusion. The opinion of June 17, 1975 would not be applicable in the situation being addressed by the present opinion, as a county service officer is not a "Service Office, V.F.W."

The position addressed in the opinions of June 17, 1975 and May 6, 1964, was created initially in Act No. 339, 1949 Acts and Joint Resolutions. Section 49 of that Act provides in part:

PROVIDED, FURTHER, That for the fiscal year beginning July 1, 1949, an additional sum of \$15,000.00 is hereby appropriated to the State Service Bureau for the purpose of paying the salaries of additional specialized personnel to be assigned to duty at the Veterans Administration installations in South Carolina, such personnel to be designated and their salaries fixed on the basis of recommendations to the State Service Officer from the governing authorities of the three major veterans' organizations in the State. The expenditure of this special fund shall be subject to the provisions of Section 79 of this Act.

Clearly, this position is in addition to and not the same as those county service officers contemplated by Section 25-11-40 et seq. of the Code. The opinions addressing a county service officer and the position of "Service Officer, V.F.W." are

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therefore readily distinguishable and are not deemed to be inconsistent. 1/

In conclusion, it is the opinion of this Office that, as stated in Opinion No. 58, August 11, 1960, one who would serve simultaneously as a member of a city council and as a county service officer would most probably contravene the dual office holding prohibitions of the State Constitution.

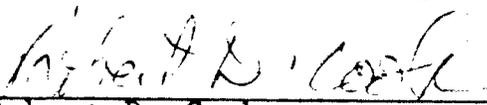
Sincerely,

Patricia D. Petway
Patricia D. Petway
Assistant Attorney General

PDP:djg

Enclosures

REVIEWED AND APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions

1/ The differences between the two positions are numerous. County service offices and officers were created by a permanent statute; officers are appointed by the Governor to serve a specific term of two years; and their duties are statutorily specified. See Sections 25-11-40 and -50 of the Code. "Service Officer, V.F.W." was created by a proviso in the Appropriations Act, apparently re-enacted yearly until approximately 1979. Appointment was made upon recommendation of the three veterans' organizations, with no tenure specified. The duties were not specified; but by the opinion of June 17, 1975, the nature of the duties appears to be advisory.