

1984 WL 249824 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 10, 1984

*1 Gary Hopkins
Deputy Coroner
Route 1
Box 109C
Blenheim, South Carolina 29516

Dear Mr. Hopkins:

During our telephone conversation on Tuesday, February 7, 1984, you inquired whether one person may serve simultaneously as coroner of Marlboro County and as a part-time police officer for the Town of Clio, considering the dual office holding provisions of the Constitution of the State of South Carolina.

[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 held on numerous occasions that one who is a coroner or deputy coroner holds an office within the meaning of the South Carolina Constitution. See, for example, Opinions of the Attorney General dated July 15, 1982 and February 16, 1983 (copies enclosed). It has been held repeatedly by this Office also that city police officers, who exercise a portion of the sovereign powers of the State, are officers. See, for example, Opinion of the Attorney General dated October 20, 1982 (copy enclosed). Thus, it is the opinion of this Office that one person could not serve simultaneously as coroner or deputy coroner and city police officer without violating the dual office holding provisions of the Constitution of South Carolina.

If one person holds one office (city police officer, for example) on the date he assumes a second office (coroner, for example), both offices falling within the provisions of [Article XVII, § 1A of the Constitution](#), he is deemed to have vacated the former office. However, that person may continue to perform the duties of the previously held office as a de facto officer, rather than de jure, until a successor is duly selected to complete his term of office (or to assume his duties if the term of service is indefinite). See, [Walker v. Harris, 170 S.C. 242 \(1933\)](#); [Dove v. Kirkland, 92 S.C. 313 \(1912\)](#); [State v. Coleman, 54 S.C. 282 \(1898\)](#); [State v. Buttz, 9 S.C. 156 \(1877\)](#).¹

The same law also applies in your present situation as deputy or assistant coroner and police officer for the Town of Clio. You did not indicate to me which position you first held when you assumed the second. As to the first, you would be serving as a de facto officer and as to the second, a de jure officer. Though the position in which you are serving as a de facto officer would be deemed to be vacant, please be advised that anything you have done as a de facto officer in relation to the public or third parties will be considered as valid and effectual as those of a de jure officer unless or until a court would declare such acts void or remove you from office. See, for example, [State ex rel. McLeod v. Court of Probate of Colleton County, 266 S.C. 279, 223 S.E.2d 166 \(1976\)](#); [State ex rel. McLeod v. West, 249 S.C. 243, 153 S.E.2d 892 \(1967\)](#); [Kitman v. Ayer, 3 Stro. 92 \(S.C. 1848\)](#); 67 C.J.S. Officers § 276.

*2 Please be advised that the dual office holding provisions of the Constitution do not prohibit a person from offering for election for one office (coroner, for example) while holding another office (police officer, for example).

I hope that the enclosed Opinions and this information will answer your questions. I will be in touch with you soon to make sure that all of your questions have been answered. If you have additional questions in the meantime, please do not hesitate to call me at 758-3970.

Sincerely,

Patricia D. Petway
Staff Attorney

Footnotes

- 1 A de jure officer is 'one who is in all respects legally appointed and qualified to exercise the office.' 63 Am.Jur.2d Public Officers and Employees § 495. A de facto officer is 'one who is in possession of an office, in good faith, entered by right, claiming to be entitled thereto, and discharging its duties under color of authority.' Heyward v. Long, 178 S.C. 351, 183 S.E. 145, 151 (1936); see also Smith v. City Council of Charleston, 198 S.C. 313, 17 S.E.2d 860 (1942) and Bradford v. Brynes, 221 S.C. 255, 70 S.E.2d 228 (1952).

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