

1984 WL 249969 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 29, 1984

*1 Wade H. Logan, III, Esquire
Charleston County Attorney
Post Office Box 1090
Charleston, South Carolina 29402

Dear Mr. Logan:

By your letter of August 20, 1984, you have requested the opinion of this Office on whether an individual simultaneously serving on the North Charleston City Council and on the Board of Trustees of Charleston Memorial Hospital would contravene the dual office holding your accompanying memorandum, you have concluded that an individual your accompanying memorandum, you have concluded that an individual so holding those offices would be holding dual offices. This Office concurs with your conclusion.

[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, 59 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).

In several prior Opinions of the Attorney General, it has been repeatedly held that a member of a city council is an officer. [See](#), for example, Opinions dated January 31, 1984; July 8, 1982; September 7, 1982; and June 18, 1982. As to the City Council of North Charleston in particular, your memorandum correctly points out that [t]he position of Councilman for the City of North Charleston was created and continues to exist as a legal office by virtue of the charter issued to the City of North Charleston by the Secretary of State at its time of incorporation pursuant to [S.C. Code §§ 5-9-10](#) et seq. The office of councilman is clearly one within the scope of [Article XVII, Section 1A](#), since it is an office of honor or profit exercising some portion of the sovereignty of the state.

The Board of Trustees for the Charleston Memorial Hospital, formerly know as Charleston County Tuberculosis Hospital and Pinehaven Hospital, was established by resolution of the Charleston County Council on July 20, 1954. By a resolution of Council dated June 7, 1983, trustees serve at the pleasure of Council, all references to a specific tenure having been voided. No qualifications for office are specified; no provisions for an oath of office or salary are included in the resolutions. The powers and duties of the trustees are provided in a resolution of Council dated February 7, 1961:

That there is hereby created a Board of Trustees of Pinehaven Hospital, which Board is hereby delegated the responsibility of operating Pinehaven Hospital as a general hospital for the treatment of the indigent sick and the tuberculosis victims of Charleston County. As part of its responsibility, the Board shall also supervise all contracts with other agencies and institutions which may be entered into by the County of Charleston as a part of its program of medical care.¹

*2 As you state in your memorandum, the trustees approve ‘agreements of a management nature; authorizes a budget for the hospital; and authorizes the expenditures of all hospital funds.’ You also state that [c]early the members of the Charleston Memorial Hospital Board of Trustees exercise some portion of the sovereignty of the state, since their role is to provide medical [care] for the indigent hospital patients of Charleston County. In fact, they use locally

generated tax money to pay part of the cost of providing this care. The board members are appointed solely by Charleston County Council and the position under consideration is not that of an ex officio member.

Taking all factors into account, this Office would conclude, as you have concluded, that a member of the Board of Trustees of Charleston Memorial Hospital would most probably be considered as holding an office for dual office holding purposes.

In conclusion, and in concurrence with you conclusion, it is the opinion of this Office that one who would serve simultaneously as a member of the North Charleston City Council and on the Board of Trustees of the Charleston Memorial Hospital would most probably contravene the dual office holding prohibition of the Constitution of the State of South Carolina.

Sincerely,

Patricia D. Petway
Assistant Attorney General

Footnotes

- 1 By a resolution of Council dated April 6, 1965, the name of Pinehaven Hospital was renamed Charleston County Hospital. When the name was changed to Charleston Memorial Hospital is unclear.

1984 WL 249969 (S.C.A.G.)