

1980 WL 120751 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 26, 1980

*1 Honorable Robert C. Lake, Jr.
205 Gressette Senate Office Building
Post Office Box 142
Columbia, South Carolina 29202

Dear Senator Lake:

You have requested an opinion from this Office as to whether an elected member of county council may be hired as a state employee for pay without violating the dual office holding provision of the [South Carolina Constitution, Article VI, § 3](#) of the South Carolina Constitution provides that ‘No person shall hold two offices of honor and profit at the same time . . .’ [See also, Article XVII, § 1A](#). For this provision to be contravened, a person must hold concurrently two ‘public offices with duties involving an exercise of some part of the sovereign power of the State.’ [Sanders v. Belue, 78 S.C. 171, 58 S.E.2d 762 \(1907\)](#).

It has previously been the opinion of this Office that the State’s restrictions do not prohibit a public officer from holding a position of employment with a state agency. There is no doubt that the office of county councilman is a public office within the meaning of [Article VI, § 3 of the State Constitution](#). The councils of each of the counties in Senatorial District Number 5 are established as permanent governing bodies with sovereign authority. (See Designation of powers, [S. C. Code Ann. § 4-9-30](#), attached herewith.)

In [Sanders v. Belue, supra](#), the Court distinguished a public employee from a public officer in the following manner:

[O]ne who merely performs the duties required of him by persons employing him under an express contract or otherwise though such persons be themselves public officers, and though the employment be in or about a public work or business, is a mere employee.

The position in question which you discussed with this Office by telephone, was that of secretary or filing clerk. It is the opinion of this Office that since someone holding a clerical position does not exercise the sovereign power, the position would not be an ‘office’; rather, an ‘employee’ under the dual office holding provision of the South Carolina Constitution.

Accordingly, one may concurrently hold a position with the State in the above-described capacity and be a member of county council.

I trust this answers your question. If you need further assistance, please do not hesitate to contact me.

Yours very truly,

James W. Johnson, Jr.
Assistant Attorney General

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