

1977 S.C. Op. Atty. Gen. 136 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-171, 1977 WL 24513

Office of the Attorney General

State of South Carolina

Opinion No. 77-171

June 2, 1977

*1 The Honorable James M. Waddell, Jr.

Member

South Carolina Senate

Box 1026

Beaufort, South Carolina 29902

Dear Senator Waddell:

Your letter of June 1, 1977, inquires whether a Member of the General Assembly may be elected as a member of the South Carolina Coastal Council to a position other than as one of the four Members of the General Assembly to serve *ex officio*. The Council consists of the following members: Six members from each of the Congressional Districts to be elected by a majority vote of the Members of the House of Representatives and the Senate representing the counties in such district; four legislative members to serve *ex officio*, two of whom shall be State Senators appointed respectively by the President of the Senate and the Senate Fish, Game and Forestry Committee, and two Members of the House of Representatives to be appointed by the Speaker of the House; and eight members, one from each of the coastal zone counties, to be appointed by the local county governing body.

Your question therefore concerns whether or not a Member of the Legislature would be eligible to be one of the eight members from the coastal zone counties to be appointed by the governing bodies of the counties, or to be one of the six members to be elected by the delegations from each of the Congressional Districts.

It is my opinion that a Member of the General Assembly may not be elected or appointed as one of the eight members by the governing bodies of the coastal zone counties or to be one of the six members to be elected by the delegations from the respective Congressional Districts without violating the dual officeholding provisions of the State Constitution. The basis for this conclusion is set forth below.

Membership upon the Coastal Council constitutes, in my opinion, an office, as all of the accepted indicia of an office appear to be met by the powers and duties as set forth in Section 5 of the organic act approved May 24, 1977. The question was considered in [Ashmore v. Greater Greenville Sewer District, 211 S.C. 77, 44 S.E.2d 88](#), which considered the circumstances in which Members of the General Assembly were designated as members of a Municipal Auditorium Commission, in which the Court stated that the constitutional provision relating to the General Assembly 'seems to us to prove itself, that a member cannot sit upon the Board of Auditorium Trustees established in the Act under review and at the same time retain his membership in the General Assembly.' The constitutional provision to which reference is made forbids the holding of another public office or position by a Member of the General Assembly and provides that upon the acceptance of any such by a Member, he shall vacate his seat.

Of course, a Member of the General Assembly may be named by the President of the Senate or elected by the Senate Fish, Game and Forestry Committee or appointed by the Speaker of the House to serve *ex officio* as members of the Council. The Act so provides. But membership on the Council cannot, in my opinion, be filled by Members of the General Assembly without violating the constitutional provision to which reference is made, except as indicated above.

Very truly yours,

*2 Daniel R. McLeod
Attorney General

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