

1979 WL 42962 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 30, 1979

***1 SUBJECT: Richland County Tax Execution Committee**

The auditor, treasurer and tax assessor of Richland County cannot be appointed as members of the Tax Execution Committee of Richland County. The county attorney and council chairwoman of Richland County may be members of the Committee without violating the dual office provisions of the South Carolina Constitution.

Costa M. Pleicones, Esq.
Richland County Attorney

QUESTION:

May the Richland County Council Chairwoman, Auditor, Treasurer, Assessor and County Attorney be appointed to the County Tax Execution Committee without violating the provisions of the South Carolina Constitution relating to dual office holding?

STATUTES:

[Article VI, Section 3, South Carolina Constitution](#); [Article XVII, Section 1A, South Carolina Constitution](#); Act No. 998, 1966 Acts.

DISCUSSION:

Act 998, Section 1, provides for the creation of the Tax Execution Committee of Richland County. It shall be composed of one member of the County Board of Administration (County Council) and four persons appointed by the Council. This Board is the only authority empowered to mark tax executions 'nulla bona' in Richland County.

[Article VI, Section 3 of the South Carolina Constitution](#) states:

'No person shall hold two offices of honor or profit at the same time; provided, that this limitation shall not apply to officers in the militia, notaries public, or delegates to a Constitutional Convention.'

Additionally, [Article XVII, Section 1A](#), in part provides that 'no person shall hold two offices of honor or profit at the same time'. Exceptions to the rule are set forth but are inapplicable to the officers here in issue.

Numerous opinions have been written by this office on the subject of dual office holding. The issue here, however, has not been addressed before.

The prohibition is against a person holding more than one public office. In the case of [Sanders v. Belue, et al.](#), 78 S. C. 171, 58 S. E. 762, the Supreme Court of South Carolina, with regard to public officers and employees, said:

'* * *. One who is charged by law with duties involving an exercise of some part of the sovereign power, either small or great, in the performance of which the public is concerned, and which are continuing, and not occasional or intermittent, is a public officer. Conversely, one 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 employe. * * *.’

The auditor, treasurer and tax assessor's positions are created by statute and are public officers. The Tax Execution Committee in issue is created by statute and is in our opinion a public office within the above statement, therefore, the appointment of the treasurer, auditor or tax collector to the Committee would violate the dual office provisions in the Constitution.

*2 The county attorney is not an officer within the meaning of the statement in Sanders v. Belue, supra; he may therefore be a member of the Tax Committee. We also see no objection to the chairwoman of the council being a member of the Committee, such being an appointment made pursuant to the Act creating the Committee.

CONCLUSION:

The auditor, treasurer and tax assessor of Richland County cannot be appointed as members of the Tax Execution Committee of Richland County. The county attorney and council chairwoman of Richland County may be members of the Committee without violating the dual office provisions of the South Carolina Constitution.

G. Lewis Argoe, Jr.
Senior Assistant Attorney General

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