

1985 WL 259112 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 15, 1985

*1 Mr. Birney Blind
Director of Planning
Horry County Planning Commission
Post Office Box 1236
Conway, South Carolina 29526

Dear Mr. Blind:

You have asked the opinion of this Office concerning dual office holding or other problems in two combinations of positions: (1) member of the Planning Commission—employee of Horry County; and (2) member of the Planning Commission—member of the Horry County Accommodations Tax Advisory Board. Each combinations of positions will be addressed separately, as follows:

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).

Planning Commission—County Employee

This Office has held repeatedly that members of various planning commissions are officers for dual office holding purposes. Enclosed is a copy of Op. Atty. Gen. dated January 31, 1984, so stating and citing to other opinions of this Office.

The individual in question is also employed by Horry County as a Detail Crew Foreman in the Public Works Department. He receives his orders from and is responsible to the District Supervisor. His duties include cleaning ditches and culverts, maintaining rights-of-way, and installing drain tile when necessary. He receives compensation from the county for the work he performs. Tenure of the position is not specified by any statute, nor is an oath required. The duties performed by the individual are not those generally considered to be an exercise of some portion of the sovereign power of the State even though such duties are performed for the State or county. The following from Sanders v. Belue, supra, is pertinent: [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 such persons themselves public officers, and though the employment be in or about a public work or business, is a mere employee.

78 S.C. at 174. Thus, the individual in question would be an employee of the county rather than an officer, and no dual office holding problem would exist.

This Office has also examined the combination of positions to make certain that the common law master—servant principles would not be violated. It should be noted that the individual is employed by Horry County rather than by the

Planning Commission. He is supervised by and responsible to county Public Works Department officials. The Planning Commission does not determine his compensation as a county employee.

*2 The common law principles are summarized as follows:

[A] conflict of interest exists where one office is subordinate to the other, and subject in some degree to the supervisory power of its incumbent, or where the incumbent of one of the offices has the power of appointment as to the other office, or has the power to remove the incumbent of the other or to punish the other. Furthermore, a conflict of interest may be demonstrated by the power to regulate the compensation of the other . . .

The offices may be incompatible even though the conflict in the duties thereof arises on but rare occasions . . . In any event, the applicability of the doctrine does not turn upon the integrity of the officeholder or his capacity to achieve impartiality . . .

67 C.J.S. Officers § 27. See also Ops. Atty. Gen. dated May 21, 1984 (enclosed) and March 3, 1978. Applying these principles to the positions of the individual in question, it would appear that there is no master—servant relationship in this instance to prohibit the individual from occupying both positions.

In conclusion, one who would serve concurrently as a member of the Horry County Planning Commission and as a county employee would most probably not contravene the dual office holding prohibitions of the State Constitution or the common law master—servant principles.

Planning Commission—Accommodations Tax Advisory Board

As noted in response to your first question, a member of a planning commission has been determined by this Office to be a public officer. However, by an opinion dated July 17, 1984, a copy of which is enclosed, a member of a county accommodations tax advisory board was determined not to be an officer due to the advisory nature of the duties; the lack in some instances of qualifications of members being specified; and the lack of specification of tenure, salary, or an oath. Thus, one could serve concurrently on the Horry County Planning Commission and on the county Accommodations Tax Advisory Board without contravening the dual office holding prohibitions of the State Constitution.

I trust that the above will satisfactorily respond to your inquiry. Please advise me if you need additional assistance or clarification.

Sincerely,

Patricia D. Petway
Assistant Attorney General

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