

1985 WL 258995 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 17, 1985

***1** Mr. Claude Driggers
Marlboro County Supervisor
Post Office Box 419
Bennettsville, South Carolina 29512

Dear Mr. Driggers:

You have asked this Office whether one who would serve simultaneously as Judge of Probate for Marlboro County and on the Marlboro County Historical Commission would contravene the dual office holding prohibitions of the Constitution of the State of South Carolina.

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. Beluc*, 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).

The Judge of Probate has been found to be an office. See *Ops.Atty.Gen.* dated November 29, 1982 and August 14, 1980, copies of which are enclosed. See also *State ex rel. McLeod v. Court of Probate of Colleton County*, 266 S.C. 279, 223 S.E.2d 166 (1975).

By "Historical Commission," it is assumed that you are referring to Marlboro County's Historic Preservation Commission, which was established pursuant to Act No. 185, 1965 Acts and Joint Resolutions. Section 3 of that Act, concerning membership on the Commission, specifically provides that "[m]embership on the Commission shall not be construed to be an office of honor or profit." While there is some question as to the Legislature's authority to interpret as exempt, by statute, a position from the dual office holding prohibitions of the State Constitution, such an interpretation is nevertheless entitled to much weight. *Acker v. Cooley*, 177 S.C. 144, 181 S.E. 10 (1935). Thus, by statute, one who serves on the Commission would not be deemed to be holding an office for dual office holding purposes.

In conclusion, one may most probably serve as Judge of Probate for Marlboro County and as a member of the Historic Preservation Commission without contravening the dual office holding prohibitions of the State Constitution.

Sincerely,

Patricia D. Petway
Assistant Attorney General

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