

1978 WL 34632 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 3, 1978

*1 The Honorable Ralph H. Ellis,
Senator
Post Office Box 66
Little River, SC 29566

Dear Senator Ellis:

Recently you have inquired if the same individual may serve as a member of the North Myrtle Beach City Council and at the same time serve as a member of the Grand Strand Water and Sewage Commission. The Grand Strand Water and Sewage Commission is created pursuant to Act No. 337 of 1971.

It is apparent from reading Act No. 337 that the position of member on the Grand Strand Water and Sewage Authority constitutes an office in the constitutional sense. This body is given extensive and explicit powers which involve expending public monies, exercising the power of eminent domain, and setting rates for water and sewage service. In accord with a long line of opinions from this Office, membership on this Water and Sewer Authority would constitute an office.

It is also a well determined fact that City Council membership constitutes an office in the constitutional sense. Therefore, the same individual could not serve in both capacities simultaneously without violating dual office holding restrictions. When an individual assumes a second office, such assumption acts as a vacation of the first office. The individual continues to serve in the first office as the de facto officer, until his successor is appointed and qualified in the manner provided for filling vacancies in office. Acts of the Commission member taken as a de facto office holder are valid as to all third parties.

I hope this information will be helpful to you, and I am sending along an Opinion No. 3155, dated August 2, 1971, in which Attorney General McLeod makes a similar determination about the Pickens County Water Authority. Should you require any additional information on this subject, please let me know.

With best wishes for the New Year, I am
Sincerely,

George C. Beighley
Assistant Attorney General

1978 WL 34632 (S.C.A.G.)