

1979 WL 43038 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 30, 1979

*1 Honorable J. P. Strom
Chief
South Carolina Law Enforcement Division
P. O. Box 21398
Columbia, South Carolina 29221

Dear Chief Strom:

You have asked whether the constitutional provision prohibiting dual office holding is violated when the same person simultaneously serves as County Administrator and holds a non-pay State Constable's Commission.

In [Sanders v. Belue](#), 78 S.C. 171, 58 S.E. 762 (1907), the Supreme Court defined public officer as follows:

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.

This Office has, in numerous prior opinions, advised that one who holds a non-pay State Constable's Commission is a public officer for dual office holding purposes. See e.g., 1973 Attorney General Opinion No. 3455, copy of which is enclosed.

In determining whether the position of County Administrator is an office for dual office holding purposes, we must assume that the county involved has properly adopted the Council-Administrator form of government provided for in [Section 4-9-610, et seq., Code of Laws of South Carolina](#), 1976. The powers and duties of the Administrator are found in Section 4-9-630:

The powers and duties of the administrator shall include, but not be limited to, the following: (1) to serve as the chief administrative officer of the county government; (2) to execute the policies, directives and legislative actions of the council; (3) to direct and coordinate operational agencies in administrative activities of the county government; (4) to repair annual operating and capital improvement budgets for submission to the council and in the exercise of these responsibilities he shall be empowered to require such reports, estimates and statistics on an annual or periodic basis as he deems necessary from all county departments and agencies; (5) to supervise the expenditure of appropriated funds; (6) to prepare annual, monthly and other reports for council on finances and administrative activities of the county; (7) to be responsible for the administration of county personnel policies including salary and classification plans approved by council; (8) to be responsible for employment and discharge of personnel subject to the provisions of subsection (7) of section 4-9-30 and subject to the appropriation of funds by the council for that purpose; and (9) to perform such other duties as may be required by council.

Such powers and duties clearly involve some exercise of the sovereign power. Hence, a County Administrator is a public officer for dual office holding purposes pursuant to the definition in [Sanders, supra](#), and a County Administrator would be violating the dual office holding provisions of the State Constitution if he accepted a non-pay State Constable's Commission.

Sincerely,

*2 James W. Johnson, Jr.
Assistant Attorney General

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