

1979 WL 43052 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 6, 1979

\*1 W. Kenneth Eaton, Jr., Esquire  
McGowan, Nettles, Keller & Eaton, P.A.  
229 South Coit Street  
Post Office Box 1461  
Florence, South Carolina 29503

Dear Mr. Eaton:

You have recently asked the opinion of this Office on whether a person may hold the position of municipal councilman while at the same time continuing a pre-existing membership on the South Carolina Commission on Human Affairs. More specifically, you ask whether this circumstance would constitute dual office holding by the person, and if so, what affect this would have on his holding the position of councilman.

[Article XVII, § 1A of the South Carolina Constitution](#) states that ‘. . . no person shall hold two offices of honor and profit at the same time.’ Also see Article VI, § 3. Thus, it is necessary to determine if each of the positions noted in your correspondence are offices within the meaning of [Article XVII, § 1A](#). An office within this provision is one which 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 occasioned or intermittent . . .’ [Sanders v. Roche](#), 78 S.C. 171 (1907).

The position of municipal councilman is an elective office created pursuant to the statutes of this State. These statutes further demonstrate that the exercise of the duties of this office involves a continuing and substantial exercise of the sovereign power of the State. Title 5, Chapters 5 through 15, Code of Laws of South Carolina, 1976, as amended. Therefore, the position of councilman is an office within the meaning of [Article XVII, § 1A](#).

The South Carolina Commission on Human Affairs, which consists of a governing body of nineteen members appointed by the Governor, is an executive department created pursuant to statutes of this State. These statutes also grant the Commission numerous powers which involve a continuing and substantial exercise of the sovereign power of the State. § 1-13-10 et seq., Code, supra. Therefore, membership on the Commission is an office within the meaning of [Article XVII, § 1A](#).

Having determined that both of the positions noted in your correspondence are offices within the meaning of [Article XVII, § 1A](#), this opinion next must determine the impact of this provision on the two offices and the person occupying them.

If a person continues to hold an office within the meaning of [Article XVII, § 1A](#) on the date he enters another such office, he thereby vacates the former office. It should be noted that the case decisions recognizing this doctrine in South Carolina do not indicate that the holding of such an office renders a person ineligible to enter another such office. In fact, the doctrine appears to have been established so as to allow the taking of the office subsequently obtained. Furthermore, the person may continue to perform the duties of the previously obtained office as a de facto officer until another person with title to the office [a de jure officer] demands access thereto, or until the office is otherwise vacated in fact. [Clarke v. South Carolina Public Service Authority](#), 177 S.C. 427 (1935); [Walker v. Harris](#), 170 S.C. 242 (1933); [Dove v. Kirkland](#), 92 S.C. 313 (1912); [State v. Coleman](#), 54 S.C. 282 (1898); [State v. Butz](#), 9 S.C. 156 (1877).

\*2 Based on the foregoing it is the opinion of this Office that the position of municipal councilman and membership on the South Carolina Commission on Human Affairs are both offices within the meaning of [Article XVII, § 1A](#). As a result thereof, a member of the Commission would vacate that office upon his subsequently entering the office of municipal councilman.

However, the person could continue to perform as a de facto member of the Commission until he is displaced by a successor or he otherwise vacates the office in fact.

Sincerely,

James M. Holly  
State Attorney

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