

1976 S.C. Op. Atty. Gen. 349 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4490, 1976 WL 23107

Office of the Attorney General

State of South Carolina

Opinion No. 4490

October 14, 1976

**\*1 The simultaneous holding of the positions of town councilman and member of a local mental retardation board constitutes dual office holding.**

Attorney

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Article XVII Section 1A of the South Carolina Constitution provides that no person shall hold two offices of honor or profit at the same time. An office has been defined by the South Carolina Supreme Court in *Sanders, et al. v. Belue, et al.*, 78 S. C. 171, 58 S. E. 762 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 office.

There is no question that the position of town councilman constitutes an office within the *Sanders* definition. See *Darling v. Brunson*, 94 S. C. 207, 77 S. E. 860; *State v. Coleman*, 54 S. C. 282, 32 S. E. 406.

Sections 32.1034.21 *et seq.* of the 1962 Code of Laws of South Carolina, as amended, provide for the establishment of local mental retardation boards. Members of these local boards are appointed by the Governor upon the recommendation of a majority of the county legislative delegation to serve for a term of four years. The local boards have numerous duties to perform that are specifically established by law and which clearly involve an exercise of the sovereign power of this state. These duties are continual in nature and not occasional or intermittent. See Op. Atty. Gen., September 4, 1975.

Therefore, it is the opinion of this Office that the position of member of the Georgetown County Mental Retardation Board is an office within the meaning of Article XVII Section 1A of the Constitution, and that acceptance of that position by one serving as a town councilman would constitute dual office holding.

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