

1976 S.C. Op. Atty. Gen. 317 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4459, 1976 WL 23076

Office of the Attorney General

State of South Carolina

Opinion No. 4459

September 21, 1976

\*1 Mr. Wayne Adams  
Acting Executive Director  
South Carolina Republican Party  
P. O. Box 5247  
Columbia, SC 29250

Dear Mr. Adams:

I am in receipt of your recent letter in which you asked the following question:

Can elected and appointed officials; i.e., U.S. Senators, the Governor, Commission officers, etc., serve as presidential electors?

A presidential elector holds a state office. The presidential elector exercises a federal function in balloting for the President and Vice-President, but they are not federal officers or agents but are State officers. [Ray v. Blair](#), 34 U.S. 214, 96 S.Ed. 894, 72 S.Ct. 654 (1952); [Hadnott v. Amos](#), 295 F.Supp. 1003 (1968) rev. on other grounds 394 U.S. 358, 22 L.Ed.2d 336, 89 S.Ct. 1101 (1969); [Gardner v. Blackwell, Secretary of State](#), 167 S.C. 313, 166 S.E. 338 (1932); 25 Am.Jur.2d [Elections](#), Section 9.

As a presidential elector is a State office, it would be necessary to examine the special circumstances of each nominee for presidential elector to determine if that person is holding another position which would bring him into the constitutional prohibition against dual office holding should he accept the office of presidential elector. South Carolina Constitution, as amended, Art. VI, Section 3.

A United States Senator is prohibited by the provisions of the United States Constitution from accepting the position of presidential elector. Article II, Section 1 of the United States Constitution states that the President shall . . . be elected as follows

Each state shall appoint, in such manner at the legislature thereof may direct, a number of electors, equal to the whole number of Senators and representatives to which the State may be entitled in the Congress; but no Senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

Therefore, a United States Senator could not be a presidential elector. Likewise, the Governor would be prohibited from being a presidential elector by the provisions of the South Carolina Constitution. Article IV, Section 2, of the South Carolina Constitution states . . . no person while Governor shall hold any office or other commission (except in the militia) under the authority of this State, or any other power.

You have additionally inquired if a commission officer could serve as a presidential elector. I assume you are referring to an election commissioner. Each commissioner of election is appointed to his position by the Governor prior to the

election. South Carolina Code of Laws, 1962, as amended, Section 23-400. Whether or not a person is a public officer within the provisions of the constitutional prohibition against dual office holding was dealt with in the case of [Sanders v. Belue](#), 78 S.C. 171, 58 S.E. 762 (1907). The Court stated that 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.

\*2 Under this definition an election commissioner would be a public officer and could not also accept the office of presidential elector. See letter of July 10, 1970, Assistant Attorney General Robert W. Brown to R. T. Stevenson.  
Very truly yours,

Treva G. Ashworth  
Assistant Attorney General

1976 S.C. Op. Atty. Gen. 317 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4459, 1976 WL 23076

---

End of Document

© 2017 Thomson Reuters. No claim to original U.S. Government Works.