

1976 S.C. Op. Atty. Gen. 375 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4514, 1976 WL 23131

Office of the Attorney General

State of South Carolina

Opinion No. 4514

November 5, 1976

***1 RE: Dual Officeholding**

Mrs. Suzette C. Bailey
Project Director
Division of Migrant Labor
S. C. Department of Labor
P. O. Box 11329
Columbia, South Carolina 29211

Dear Mrs. Bailey:

You have inquired as to whether you would be in violation of the dual officeholding prohibition of the State Constitution should you be appointed as a member of the South Carolina Migrant Farm Workers Commission while remaining in your present position as Project Director of the South Carolina Department of Labor's Division of Migrant Labor.

The Constitution of South Carolina (1895), as amended, Article 17, § 1A, provides that ‘. . . no person shall hold two offices of honor or profit at the same time’. You would not offend this provision, since your position with the Department of Labor is a public employment rather than a public office. This distinction was made in the leading case of [Sanders v. Belue](#), 78 S.C. 171, 58 S.E. 762 (1907). There it was held:

‘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. Conversely, one who merely performs the duties required of him by persons employing him under an express contract or otherwise, though such persons be themselves public officers, and though the employment be in or about a public work or business, is a mere employee.’

I hope this information proves helpful to you. Please contact me if I may be of further assistance.

Very truly yours,

Wade S. Kolb, Jr.
Assistant Attorney General

1976 S.C. Op. Atty. Gen. 375 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4514, 1976 WL 23131