



ALAN WILSON  
ATTORNEY GENERAL

August 17, 2018

Ms. Chaconas Parson  
Town of Andrews  
Post Office Box 378  
Andrews, SC 29510

Dear Ms. Parson:

You have requested an opinion from this Office regarding conflict of interest and dual office holding. In your letter, you state that although the Town of Andrews' Municipal Court has been managed by Georgetown County since September 2002, the Town will soon resume management of its Municipal Court. You currently serve as the Town Clerk/Treasurer/Municipal Clerk. It has been brought to your attention that you may be asked to take on the position of Clerk of Court as well as your current duties. You question if this would be a conflict of interest or dual office holding for you to hold the two positions simultaneously.

#### LAW/ANALYSIS:

You have asked us to address whether a conflict of interest exists, but our Office typically defers to the State Ethics Commission on issues regarding ethics.<sup>1</sup> Additionally, we do not believe that dual office holding<sup>2</sup> is implicated in your situation. Although we have not been provided with

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<sup>1</sup> The State Ethics Commission was given authority by the Legislature to interpret and issue opinions pertaining to the provisions of the Ethics Act. See S.C. Code Ann. § 8-13-320(11) (1976 Code, as amended). You may wish to contact the Commission to confirm that there are not any conflicts of interest.

<sup>2</sup> Dual office holding is prohibited by the South Carolina Constitution, which provides:

[n]o person may hold two offices of honor or profit at the same time, but any person holding another office may at the same time be an officer in the militia, member of a lawfully and regularly organized fire department, constable, or a notary public ... The limitation above set forth does not prohibit any officeholder from being a delegate to a constitutional convention.

S.C. Const., art. XVII § 1 A.

either a list of your job duties or with Town ordinances describing your position, we believe that you are either a municipal clerk or a clerk-treasurer. The South Carolina Code of Laws provides for the appointment and the duties of a municipal clerk:

[t]he council under the . . . mayor-council forms of government<sup>3</sup> . . . shall appoint an officer of the municipality who shall have the title of municipal clerk. The municipal clerk shall give notice of council meetings to its members and the public, keep the minutes of its proceedings and perform such other duties as are assigned by council.

S.C. Code Ann. § 5-7-220 (1976 Code, as amended).

Alternatively, you may be a clerk-treasurer. In a Resolution, the South Carolina Senate clarified that a clerk-treasurer has a “combined municipal clerk and finance officer role.” 2017 South Carolina Senate Resolution No. 1184. The Senate also explained that a clerk-treasurer position “is common in small-to-midsize cities, while, in larger cities, a standalone municipal clerk position usually exists.” Id.

Our Office has only briefly addressed the position of clerk-treasurer. In Op. S.C. Atty. Gen., 1979 WL 43207 (Dec. 17, 1979), we determined that a clerk-treasurer was “not the municipal clerk contemplated by Section 5-7-220,” since “[t]he municipal clerk expressly provided for by Section 5-7-220 . . . is a position created by that provision to perform duties clerical in nature.”

In reference to your question, it is irrelevant whether you are a municipal clerk or a clerk-treasurer. Section 14-25-35 provides that “[t]he municipal clerk or other municipal employee may be appointed to serve as clerk of the court.” S.C. Code Ann. § 14-25-35 (1976 Code, as amended). Whether you are a municipal clerk under the statute or an employee of the municipality, you are allowed to serve as clerk of court.

Furthermore, our understanding of your question is that you may be asked to perform the duties of a clerk of court in addition to your current duties. Your situation does not appear to involve two positions. Instead, it appears to involve one position performing additional duties. Our Office has formerly determined that “the mere assignment of additional duties to an already-existing office would not create a second office.” See Op. S.C. Atty. Gen., 1988 WL 485336 (Nov. 10, 1988).

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<sup>3</sup> The Town of Andrews has a mayor-council form of government. See <http://www.townofandrews.org/home/index.htm>.

**CONCLUSION:**

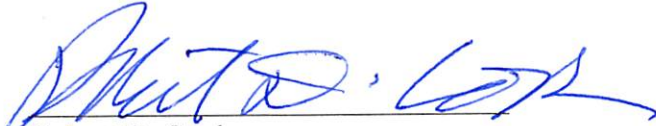
We believe that a court would conclude that this is not dual office holding. As either a municipal clerk or a municipal employee, you can serve as clerk of court. Additionally, our understanding of your situation is that it involves one position performing the additional duties of a clerk of court, so a second office would not be implicated.

Sincerely,



Elinor V. Lister  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Solicitor General