

1975 S.C. Op. Atty. Gen. 219 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 4153, 1975 WL 22448

Office of the Attorney General

State of South Carolina

Opinion No. 4153

October 8, 1975

*1 An individual may not be a city councilman and a county parole officer at the same time without violating the Constitutional restrictions on dual office holding.

TO: Robert L. Hawthorne, Jr.
Abbeville City Attorney

QUESTION PRESENTED:

Can a person serve as city councilman and county probation officer at the same time without violating constitutional restrictions on dual office holding?

STATUTES, CASES, ETC:

South Carolina Constitution, Article XVII, Section 1A;

Code of Laws of South Carolina, 1962, Sections 55–574 and 55–578;

[Edge v. Town of Cayce](#), 187 S. C. 172, 197 S. E. 216;

[Sanders, et al. v. Belue, et al.](#), 78 S. C. 171, 58 S. E. 762.

DISCUSSION OF ISSUES:

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 which 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.’ [Emphasis added]

This office has long held that the position of city councilman is an office within the above definition. See 1964–65 Ops. Att’y Gen., No. 1858, p. 120; 1971–72 Pos. Att’y Gen., No. 3273, p. 76.

This office has previously held that the position of probation officer constitutes an office as above defined. See 1963–64 Ops. Att’y Gen., No. 1769, p. 284. Section 55–578 of the 1962 Code provides in part:

‘. . . A probation officer shall have, in the execution of his duties, the powers of arrest and to the extent necessary for the performance of his duties the same right to execute process as is given by law to the sheriffs of the State. In the performance of his duties of probation and parole investigation and supervision he shall be regarded as the official representative of the court and the Board.’

Such statutory authority clearly satisfies the requirements of the Sanders case, supra.

CONCLUSION:

Since both the position of probation officer and city councilman constitute offices, they cannot be held by the same person simultaneously without violating Article XVII, Section 1A of the South Carolina Constitution.

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