

1975 S.C. Op. Atty. Gen. 230 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 4170, 1975 WL 22465

Office of the Attorney General

State of South Carolina

Opinion No. 4170

November 4, 1975

\*1 Honorable Samuel B. Mendenhall

Senator

Post Office Box 342

Rock Hill, South Carolina 29730

Dear Senator:

Thank you for your letter of October 27, 1975, requesting the opinion of this Office as to whether or not a Member of the General Assembly may serve as Special Master on an individual case basis without violating the dual officeholding provisions of the State Constitution.

The appointment of Special Master is made pursuant to Section 15–1811, Code of Laws, 1962, which provides that ‘in case of a vacancy in the office of master or in case of the disqualification or disability of the master from interest or any other reason, the Court or a judge thereof may appoint a special master in any case—.’

At the present time, York County does not have a Master, although provision is made for the appointment to fill such an office.

The Supreme Court, in considering the problem of defining an office within the meaning of the dual officeholding provision of the Constitution of this State, took note of the requirements of Section 50–1 of the Code of Laws of 1962 and deduced the following rule:

‘One who is charged by law with duties involving an exercise of some part of the sovereign power, either great or small, in the performance of which the public is concerned, and which are continuing and not occasional or intermittent, is a public officer.’

While the appointment of Special Referees is provided for by law, those persons appointed in such capacity pursuant to the provisions of Section 15–1811 do not serve on a continuing basis but serve intermittently or occasionally for particular cases.

It is therefore my opinion that Members of the General Assembly appointed pursuant to Section 15–1811 are not appointed on a continuing basis and are therefore not subject to the dual officeholding provisions of the Constitution, if such appointments are made on a case-by-case basis.

With best wishes,

Cordially,

Daniel R. McLeod

Attorney General

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