

1975 S.C. Op. Atty. Gen. 233 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 4176, 1975 WL 22471

Office of the Attorney General

State of South Carolina

Opinion No. 4176

November 7, 1975

*1 The position of member of the Kershaw County Council and member of Camden Historical Commission both constitute offices within the constitutional definition, and dual office holding results if both positions are held simultaneously by the same person.

TO: William K. Byars, Jr.
Kershaw County Attorney

QUESTION PRESENTED:

Does dual office holding result where the positions of member of the Kershaw County Council and member of Camden Historical Commission are held simultaneously?

STATUTES, CASES, ETC:

South Carolina Constitution, Article XVII, Section 1A;

Code of Laws of South Carolina, 1962, as amended, Section 14-2511;

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

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

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. E. 171, 58 S. E. 762, as follows:

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.

It has long been the opinion of this office the membership on a county council constitutes an office within the above definition. See 1952-53 Op. Atty. Gen. 66, 1970 Op. Atty. Gen. 16, 1971 Op. Atty. Gen. 116.

The question then becomes whether or not membership on the Camden Historical Commission is also an office. Code Section 14-2511, as amended, creates such Commission and outlines its duties and responsibilities. These include:

. . . the acquisition, protection, publication, preservation and restoration for historical, educational and recreational purposes the areas of historical importance in and adjoining the City of Camden and all historical data and artifacts and structures pertaining thereto. The commission is empowered to accept gifts and public appropriations and to cooperate

and contract with public and private agencies and individuals for the accomplishment of its purposes. It may also appoint agents, employees and servants, prescribe their duties, fix their compensation, determine if and to what extent they shall be bonded for the faithful performance of their duties and may do such other things as may be necessary to carry out the purposes of this act.

The number of members and their terms of office are spelled out. Based on the above statutory language it appears members on the commission are charged by law with exercising a small portion of the sovereign power of the state, on a continuing basis. Also, the public should be concerned with such performance since it involves the acquisition of property and the expenditure of public funds. See also 1967–68 Op. Atty. Gen. 155.

CONCLUSION:

*2 Under the above analysis, membership on the Camden Historical Commission would constitute an office in the constitutional sense. Therefore, it could not be simultaneously held by a member of county council without violating constitutional restrictions on dual office holding.

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