

1974 S.C. Op. Atty. Gen. 19 (S.C.A.G.), 1974 S.C. Op. Atty. Gen. No. 3683, 1974 WL 21204

Office of the Attorney General

State of South Carolina

Opinion No. 3683

January 3, 1974

***1 A person occupying the position of school superintendent of city schools, a position not created by law, and mayor is not holding two offices as prohibited under the dual officeholding provisions of the Constitution of South Carolina.**

Attorney at Law
Orangeburg, South Carolina

Thank you for your letter of December 5 inquiring as to whether, in the opinion of this office, a person occupying the positions of school superintendent and mayor would constitute holding two offices as prohibited under the dual officeholding provisions of the Constitution of South Carolina.

In my opinion, the position of school superintendent, unless reference is made to a county superintendent of schools or a school superintendent whose position is created by law, is not an office within the meaning of these dual officeholding provisions. It is my understanding that the school superintendent to whom you have reference is a city school superintendent and is not included within the two types of school superintendents referred to.

While the definition of public officer set forth in Section 50-1, Code of Laws (1962), is not determinative, the term 'office' is generally considered to be one created by statute with its duties defined by law and involving the exercise of a portion of the sovereignty. While a city school superintendent undoubtedly exercises a portion of the sovereignty, I do not find that his duties are defined by law and it is my opinion that he occupies the position of employee rather than that of in office. Consequently, if this is true, I do not feel that the dual officeholding provision is involved in such circumstances. If the position of school superintendent is subject to employment by the city council, a different consideration is required, in that the same person cannot occupy the position of master and servant.

Sanders v. Belue, 78 S. C. 171, 58 S. C. 762; *McMahan v. Jones*, 94 S. C. 362, 77 S. E. 1022.

Daniel R. McLeod
Attorney General

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