



ALAN WILSON
ATTORNEY GENERAL

March 30, 2020

Ms. Hattie Jackson
PO Box 423
Allendale, SC 29810

Dear Ms. Jackson:

You have requested an opinion of this Office regarding whether it would constitute dual office holding for you to serve as both a member of the Allendale City Council and as a Mapper/Clerk for the Allendale County Tax Assessor's Office. You inform us that in your position as a mapper/clerk, you perform mapping duties, data entry, and other general office duties. You state that you do not appraise property as you are not licensed.

During our telephone conversation, you also asked us to address whether two citizens of the City of Allendale who reside in the same household, but are not related by blood or marriage, can both run for positions on the Allendale City Council. You inform us that these positions are at-large.

LAW/ANALYSIS:

We will begin with a discussion of dual office holding. Dual office holding is provided for in the South Carolina Constitution, which states:

[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.

The South Carolina Supreme Court explains that an "office" for dual office holding purposes is:

"One who is charged by law with duties involving an exercise of some part of the sovereign power, either small or great, in the

Ms. Hattie Jackson
Page 2
March 30, 2020

performance of which the public is concerned, and which are continuing, and not occasional or intermittent, is a public officer.” Sanders v. Belue, 78 S.C. 171, 174, 58 S.E. 762, 763 (1907), “In considering whether a particular position is an office in the constitutional sense, it must be demonstrated that “[t]he power of appointment comes from the state, the authority is derived from the law, and the duties are exercised for the benefit of the public.” Willis v. Aiken County, 203 S.C. 96, 103 26 S.E.2d 313, 316 (1943). “The powers conferred and the duties to be discharged with regard to a public office must be defined, directly or impliedly, by the legislature or through legislative authority ...”63C Am Jur.2d Public Officers and Employees § 5 (2009).

Segars-Andrews v. Judicial Merit Selection Commission, 387 S.C. 109, 691 S.E.2d 453 (2010).
Other relevant considerations for an office are:

whether the position was created by the legislature; whether the qualifications for appointment are established; whether the duties, tenure, salary, bond, and oath are prescribed or required; whether the one occupying the position is a representative of the sovereign; among others.

Op. S.C. Atty. Gen., 2013 WL 3243063 (June 17, 2013) (quoting State v. Crenshaw, 274 S.C. 475, 478, 266 S.E.2d 61, 62 (1980)).

Our Office has previously opined that a city council member holds an office for dual office holding purposes. See Op. S.C. Atty. Gen., 2013 WL 5291571 (Sept. 9, 2013) (“[t]his Office has advised on numerous occasions that a member of a town or city council holds an office for purposes of the constitutional prohibition against dual office holding.”)

We must now determine whether a mapper/clerk with a county tax assessor’s office is an officer. The position of mapper/clerk and its qualifications, duties, tenure, and salary are not created by statute. According to your description of your job duties, you do not exercise the sovereign power of the State. In Sanders v. Belue, 78 S.C. 171, 58 S.E. 762, 763 (1907), the court held:

[o]ne who merely performs the duties required of him by persons employing him under an express contract or otherwise, though such persons be themselves public officers, and though the employment be in or about a public work or business, is a mere employé.

It is our opinion that the position of mapper/clerk, as you have described it, is an employee rather than an officer. Since this position is not an office, we do not believe that it would violate the

Ms. Hattie Jackson
Page 3
March 30, 2020

prohibition against dual office holding for you to serve as both a member of the Allendale City Council and as a Mapper/Clerk for the Allendale County Tax Assessor's Office.

Another issue that arises when one holds two positions is whether the relationship between them presents a conflict of interest. On prior occasions, this Office has described a conflict of interest arising from a master-servant relationship as follows:

a conflict of interest exists where one office is subordinate to the other, and subject in some degree to the supervisory power of its incumbent, or where the incumbent of one of the offices has the power of appointment as to the other office, or has the power to remove the incumbent of the other or to punish the other. Furthermore, a conflict of interest may be demonstrated by the power to regulate the compensation of the other, or to audit his accounts. Op. S.C. Atty. Gen., May 21, 2004 (quoting Op. S.C. Atty. Gen., January 19, 1994).

Moreover, our Supreme Court in McMahan v. Jones, 94 S.C. 362, 365, 77 S.E. 1022, 1022 (1913) stated: '[n]o man in the public service should be permitted to occupy the dual position of master and servant; for, as master, he would be under the temptation of exacting too little of himself, as servant; and, as servant, he would be inclined to demand too much of himself, as master. There would be constant conflict between self-interest and integrity.' Thus, we recognize if a master-servant conflict exists, a public official is prohibited from serving in both roles. See Op. S.C. Atty. Gen., 2006 WL 2382449 (July 19, 2006).

Op. S.C. Atty. Gen., 2014 WL 1398598 (Feb. 3, 2014).

Our understanding from you is that the Allendale County Tax Assessor's Office does not have any direct contact with the Allendale City Council. However, we do not have enough information to determine if a conflict of interest exists.

Furthermore, 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 Ethics Commission regarding any ethical issues holding the two positions may pose.

You have also asked us to address whether two citizens of the City of Allendale who reside in the same household, but are not related by blood or marriage, can both run for at-large positions on the Allendale City Council. In a prior opinion, we discussed the eligibility of members of a city council:

The South Carolina Constitution lists among the eligibility requirements for office that “[n]o person may be popularly elected to and serve in any office in this State or its political subdivisions unless he possesses the qualifications of an elector...” S.C. Const. Art. VI, § 1. Likewise, S.C. Const. Art. XVII, § 1 states that “[n]o person shall be elected or appointed to any office in this State unless he possess the qualifications of an elector...”

The South Carolina Code of Laws mandates that “[m]ayors and councilmen shall be qualified electors of the municipality and, if they are elected subject to residential or ward requirements as provided in this section, they shall be qualified electors of the ward prescribed for their election qualification.” S.C. Code Ann. § 5-15-20 (1976 Code, as amended). South Carolina Code § 7-5-610 establishes the qualifications for those who are entitled to vote in a municipal election. It states:

Every citizen of this State and of the United States:

- (1) Of the age of eighteen years and upwards;
- (2) Having all the qualifications mentioned in § 7-5-120;¹

¹ S.C. Code Ann. § 7-5-120 (1976 Code, as amended) provides:

(A) Every citizen of this State and the United States who applies for registration must be registered if he meets the following qualifications:

- (1) meets the age qualification as provided in Section 4, Article II of the Constitution of this State;
- (2) is not laboring under disabilities named in the Constitution of 1895 of this State; and
- (3) is a resident in the county and in the polling precinct in which the elector offers to vote.

(B) A person is disqualified from being registered or voting if he:

- (1) is mentally incompetent as adjudicated by a court of competent jurisdiction; or
- (2) is serving a term of imprisonment resulting from a conviction of a crime; or
- (3) is convicted of a felony or offenses against the election laws, unless the disqualification has been removed by service of the sentence, including probation and parole time unless sooner pardoned.

Ms. Hattie Jackson
Page 5
March 30, 2020

(3) Who has resided within the corporate limits of any incorporated municipality in this State for thirty days previous to any municipal election;

(4) Who has been registered for county, state, and national elections as herein required;

is entitled to vote at all municipal elections of his municipality.

S.C. Code Ann. § 7-5-610 (1976 Code, as amended)

Op. S.C. Atty. Gen., 2016 WL 3946156 at 1–2 (July 11, 2016).

Additionally, the Allendale City Council has the power to determine the eligibility of its members:

The council shall be the judge of the election and qualifications of its members and of the grounds for forfeiture of their office and for that purpose shall have power to subpoena witnesses, administer oaths and require the production of evidence. A member charged with conduct constituting grounds for forfeiture of his office shall be entitled to a public hearing, and notice of such hearing shall be published in one or more newspapers of general circulation in the municipality at least one week in advance of the hearing. Decisions made by the council under this section may be appealed to the court of common pleas.

S.C. Code Ann. § 5-7-210 (1976 Code, as amended).

This Office cannot find any law which prohibits unrelated citizens who are living together from both running for at-large positions on a city council. However, these citizens would have to meet the qualifications of an elector or registered voter as expressed by State law. They would also have to meet the qualification requirements of the Allendale City Council. Unfortunately, we do not know what, if any, requirements that the Allendale City Council has, since they are not published.

CONCLUSION:

Our Office does not believe that it would violate the dual office holding provision of the State Constitution for you to serve as both a member of the Allendale City Council and as a Mapper/Clerk for the Allendale County Tax Assessor's Office. We do not have enough information to determine if a conflict of interest exists and you may wish to contact the Ethics Commission regarding any ethical issues holding the two positions may pose.

Ms. Hattie Jackson
Page 6
March 30, 2020

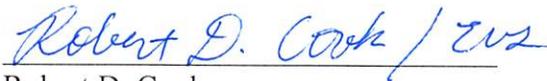
We cannot find any law which prohibits two unrelated citizens who are living together from both running for at-large positions on the Allendale City Council. However, these citizens would have to meet the qualifications of an elector or registered voter as expressed by State law. They would also have to meet the qualification requirements of the Allendale City Council. Unfortunately, we do not know what, if any, requirements that the Allendale City Council has, since they are not published.

Sincerely,



Elinor V. Lister
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General