

7779 *File*



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

June 7, 2004

Connie S. Turner, Administrative Assistant
Horry County Legislative Delegation
Post Office Box 1236
Conway, South Carolina 29528

Dear Ms. Turner:

You have requested an opinion from this Office on behalf of the Legislative Delegation for Horry County concerning dual office holding. You have asked whether the Register of Deeds for Horry County, who is appointed by Horry County Council, may be appointed by the Legislative Delegation to the Horry County Social Services Board without violating the provisions on dual office holding in the South Carolina constitution.

Law/Analysis

Article XVII, Section 1A of the State Constitution provides that "no person may hold two offices of honor or profit at the same time ..." with exceptions specified for an officer in the militia, member of a lawfully and regularly organized fire department, constable, or notary public. For this provision to be contravened, a person concurrently must hold two offices which have duties involving an exercise of some portion of the sovereign power of the State. Sanders v. Belue, 78 S.C. 171, 58 S.E. 762 (1907). Other relevant considerations are whether statutes, or other such authority, establish the position, prescribe its duties or salary, or require qualifications or an oath for the position. State v. Crenshaw, 274 S.C. 475, 266 S.E.2d 61 (1980).

I am not aware of any prior opinion of this Office that has advised as to the question of whether a county register of deeds, or as formerly called the register of mesne conveyances, would be considered an officer for dual office holding purposes. However, it would appear quite certain that a county register of deeds would be an office holder based on relevant state statutes that refer to the authority and duties of that position. For example, the county register of deeds office has the authority to charge and collect fees on behalf of the county and the state for the filing of critical legal documents such as deeds and mortgages. S.C. Code Ann. Section 4-1-150. Furthermore, Section 1-7-730 of the Code specifically refers to a county register of deeds as an "officer." It is therefore our opinion that a register of deeds exercises a portion of the state's sovereign power.

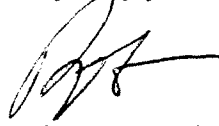
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The question then is whether a member of the Horry County Social Services Board would likewise be considered an office holder. Prior to 1993, this Office advised on a number of occasions that one who served on a county board of social services would be considered an office holder. See, as examples, Ops. S.C. Atty. Gen. dated February 11, 1986; June 12, 1986; September 7, 1989. Subsequent to these opinions, however, the enabling legislation as to county boards of social services, S.C. Code Ann. § 43-3-10 et seq., was amended by the General Assembly. See Act No. 181 of 1993 (the restructuring act). Pursuant to the amendments, we concluded in an opinion dated February 23, 1994 that county boards of social services no longer exercise a portion of the state's sovereign power, and thus members of such boards were not office holders. In the February 23, 1994 opinion, commenting with respect to the status of Williamsburg County Board of Social Services members, we concluded that:

[The 1993 amendments to Section 43-3-10 added that] the county board is to serve "in an advisory capacity to the director of the county department of social services and to the director." Prior to amendment in 1993, § 43-3-60 provided for the powers and duties of the county boards of social services; by the 1993 amendments, these powers and duties have devolved on the county directors. No other statute in Chapter 3 of Title 43 enumerates powers and duties of the county boards; as the boards serve in an advisory capacity, it appears that, since the 1993 amendments, the county boards are not exercising a portion of the sovereign power of the state. While members of county boards meet a number of the criteria usually found in an office, the exercise of sovereign power appears to be lacking. Thus, since the 1993 amendments, it appears that members of county boards of social services would no longer be considered office holders for dual office holding purposes. In that regard, prior opinions of this Office concluding otherwise must be modified to reflect the amendment to the relevant law.

Based upon the foregoing authorities, this Office advises that a member of the Horry County Social Services Board is under current law not an office holder for dual office holding purposes. Accordingly, it is our opinion that the Horry County Register of Deeds may be appointed to the Horry County Social Services Board without violating the constitutional provisions prohibiting dual office holding.

Very truly yours,



Robert D. Cook
Assistant Deputy Attorney General