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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

December 20, 2005

Ms. Lee E. Harley-Fitts
611 Mulberry Street, Building A
Allendale, South Carolina 29810

Dear Ms. Harley-Fitts:

By letter, you requested an opinion of this office regarding dual office holding. Specifically, you inquired as to whether there would be a violation of the dual office holding provision of the South Carolina Constitution for an individual to serve simultaneously as the Director of the Allendale County Department of Social Services and as a member on the Allendale County School Board. Following review, we advise that it would be a violation of the dual office holding provision to serve simultaneously as the Director of the Allendale County Department of Social Services and as a member on the Allendale County School Board.

Law / Analysis

Article XVII, Section 1A of the South Carolina 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). Furthermore, "[O]ne who merely performs the duties required of him under an express contract or otherwise, though such persons themselves be public officers, and though the employment be in or about a public work or business, is a mere employee." *Sanders, supra*, 78 S.C. at 174.

On numerous occasions, this Office has advised that a member of the school board of trustees would be considered an officer for dual office holding purposes. *See, Ops. S.C. Atty. Gen.*, May 27, 2004; April 20, 2004; October 3, 2003; April 18, 2003; June 21, 2001; August 29, 2000.

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Prior to 1993, this Office had advised on numerous 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.*, February 11, 1986; June 12, 1986; September 7, 1989. Furthermore, prior to these amendments, this Office was of the opinion that any employee below the level of county director would not hold an office, thus implying that the director would hold an office. *See, Op. S.C. Atty. Gen.*, January 11, 1985. 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, we are of the opinion that a member of the county social services board would not hold an office for dual office holding purposes. *See, Ops. S.C. Atty. Gen.*, June 7, 2004 (Horry County Social Services Board); February 3, 1994 (Williamsburg County Social Services Board). Furthermore, as a result of the 1993 amendment, it appears, as mentioned in our February 23, 1994 opinion, that the powers once held by the board of directors now fall within the authority of the county director. *See, Sections 43-3-40 – 43-3-110* for a description of the various duties of directors for county departments of social services. Section 43-3-60 provides that "county directors shall see that all laws are enforced for the protection and welfare of minors and the removal of moral menaces to the young and to safeguard and promote the health, education and general welfare of minors." This authority is clearly an exercise of a portion of the sovereign power of the State. Section 43-3-40 further provides that the county director is to be the "chief executive officer of the county department and shall perform duties as are directed by the director, regional director,

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or as directed by law.” See also, *Op. S.C. Atty. Gen.*, Op. No. 83-90 (November 15, 1983) [DSS Commissioner holds an office for dual office holding purposes]. Thus, for many of the same reasons as expressed in Op. No. 83-90, as well as discussed herein, we believe the director of the county department of social services constitutes an office. In our view, the county director, as a result the 1993 amendments, possesses a requisite portion of the State’s sovereign power so as to render the position an office for dual office holding purposes.

Conclusion

Following review of the matter presented, we advise that as a result of the 1993 amendments to Section 43-3-10, the director of a county department of social services holds an office for dual office holding purposes. Accordingly, we advise that it would be a violation of the dual office holding provision to serve simultaneously as the Director for the Allendale County Department of Social Services and as a member of the Allendale County School Board.

Very truly yours,



Robert D. Cook
Assistant Deputy Attorney General