

The State of South Carolina

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Office of the Attorney General

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August 8, 1990

Bruce E. Davis, Esquire
1704 Fair Street
Camden, South Carolina 29020

Dear Mr. Davis:

By your letter of July 27, 1990, you have asked whether a member of the Sumter School District No. 17 Board of Trustees may concurrently serve as a county administrator without contravening the dual office holding prohibitions of the State Constitution.

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 a notary public. For this provision to be contravened, a person concurrently must hold two public 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 tenure, 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).

This Office has advised previously that one who serves as a county administrator for a county in which the council-administrator form of government has been properly adopted, would hold an office for dual office holding purposes. Enclosed is a copy of an opinion of this Office dated May 30, 1979, so concluding.

While this Office has apparently not opined specifically as to membership on the Sumter School District No. 17 Board of Trustees constituting an office, this Office has on numerous occasions concluded that membership on a school district board of trustees would constitute an office for dual office holding purposes. Enclosed are opinions dated September 26, 1986 and March 2, 1989 as representative of those numerous opinions. These opinions would apply to membership on the Sumter School District No. 17 Board of Trustees.

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Based on the foregoing, it is the opinion of this Office that one who would serve concurrently as a county administrator and as a member of the Sumter School District No. 17 Board of Trustees would most probably contravene the dual office prohibitions of the State Constitution. Such being the case, you have asked whether the individual should resign from the school board.

In a dual office holding situation, the problem is actually cured by operation of law. On the date one holding an office accepts a second office, he actually vacates the first office, creating a vacancy therein. The operation of law is thoroughly explained in enclosed opinions dated September 26, 1986 and February 10, 1984. Thus, it is not necessary for the individual to actually resign since a vacancy has automatically been created. As a matter of courtesy, the individual may wish to notify the school board or other appropriate authority that he has accepted another office so that the vacancy may be filled in the appropriate manner.

We hope that the foregoing adequately responds to your questions. If we may provide additional assistance, please advise.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/an

Enclosures

REVIEWED AND APPROVED BY:

Robert D. Cook

Robert D. Cook
Executive Assistant for Opinions