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# The State of South Carolina



## Office of the Attorney General

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September 25, 1989

John M. Smith, Esquire  
Barnwell County Attorney  
Post Office Box 805  
Barnwell, South Carolina 29812

Dear Mr. Smith:

By your letter of August 24, 1989, you have requested the opinion of this Office as to whether three individuals may be holding two offices simultaneously, in violation of the dual office holding prohibitions of the State Constitution. The three combinations of positions to be considered are the following:

1. Membership on the Barnwell County Nursing Home Board and on the Barnwell County Vocational School Board.
2. Membership on the Barnwell County Office on Aging and on the Barnwell County Library Board of Trustees.
3. Membership on the Barnwell County Nursing Home Board and on the Barnwell County Museum Board.

After a discussion about what factors must be considered in determining whether a given position would be deemed an office for dual office holding purposes, each of these situations will be examined in turn.

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).

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Question 1

This Office has previously advised that membership on the Barnwell County Vocational Education School Board would constitute an office for dual office holding purposes unless the membership is due to the individual serving because he or she is chairman of the board of trustees of one of the school districts in Barnwell County. If the latter situation be the case, then membership on the vocational education board would be in an ex officio capacity and thus out of the purview of dual office holding. Enclosed are copies of opinions of this Office dated December 11, 1984 and October 25, 1984 so concluding.

The Barnwell County Nursing Home Board was created by Ordinance No. 1988-34 of Barnwell County Council. This board is to have five members appointed by council to serve terms of four years. Other than residence in Barnwell County, the members do not have to meet any specified qualifications. Compensation of board members is \$600.00 per year plus reimbursement for reasonable expenses incurred in carrying out duties of the board. No oath is required to be taken. Powers and duties are specified in Section 3 of the ordinance and include the authorization "to do all things necessary or convenient for the operation and maintenance of adequate nursing home facilities for Barnwell County... ." Toward this end, the board may adopt bylaws, operate nursing home facilities, accept gifts and the like, own and improve facilities, staff and equip the facilities, establish rates and charges, enter into contracts, sue and be sued, and so forth. The duties appear to involve an exercise of a portion of the sovereign power of the State on behalf of Barnwell County.

Based on the foregoing, one who serves on the Barnwell County Nursing Home Board would most probably hold an office for dual office holding purposes. Thus, unless serving on the vocational education board in an ex officio capacity, one serving on the Barnwell County Nursing Home Board and on the Barnwell County Vocational Education Board simultaneously would most probably be holding dual offices. Of course, only a court could declare this to be the case with finality, and only a court could remove the individual from office if such is found to be dual office holding.

Question 2

The Barnwell County Office on Aging was created by Ordinance 1986-27 of Barnwell County Council to be the designated single County Authority for providing services to the elderly citizens of Barnwell County pursuant to the Older Americans Act, P.L. 95-478. The board is comprised of eleven members who are appointed for terms

of three years. Residence in one of the county's school districts is a requirement for nine members; two members are appointed from the county at large. All members serve without compensation. No oath is required by the ordinance.

The responsibilities and duties of the board are found in Section 5 of the ordinance. The board is to develop and submit to council a plan of services to the county's senior citizens, to receive and expend gifts and the like, to enter into contracts, to employ a director and designate compensation, to coordinate all programs operated by the county's agencies providing services to the elderly, and the like. These duties probably involve an exercise of a portion of the sovereign power of the State on behalf of Barnwell County.

Considering the foregoing, a member of the Barnwell County Office on Aging would probably hold an office for dual office holding purposes, though this conclusion is not free from doubt.

The Barnwell County Library Board was established by Ordinance 1979-6 of Barnwell County Council. Members are to be appointed by council for terms of four years. No qualifications are specified in the ordinance. The ordinance does not provide for compensation or for taking an oath. Duties are specified in Section 2 of the ordinance and include the employment of a chief librarian; the purchase, leasing, holding, etc. of real property (but purchases, leases, and conveyances must be approved by council); acquiring books; acceptance of donations; entering into contracts (subject to the approval of council, however); receipt and expenditure of funds and the like; and so forth. Section 3 of the ordinance specifies additional powers and duties and includes such items as establishing a headquarters and branch libraries, operating bookmobiles, adopting regulations, preparing a budget and submitting a report to council, and so forth.

Considering the foregoing, a member of the Barnwell County Library Board would probably hold an office for dual office holding purposes, though this conclusion is not free from doubt and is less certain than the conclusion expressed as to the Barnwell County Office on Aging.

Based on the foregoing, one who would serve on the Barnwell County Office on Aging and the Barnwell County Library Board would probably hold dual offices, though, as stated above, this conclusion is not free from doubt. Only a court could resolve the issues with finality or remove an office-holder from office.

### Question 3

This Office considered membership on the Barnwell County Nursing Home Board in question 1, above, and concluded that one who

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serves on the board would most probably hold an office for dual office holding purposes.

No information on the Barnwell County Museum Board has been furnished to this Office. We do not see a listing for a museum board in the Index to Local Laws of the South Carolina Code. This Office has not opined previously on such a board in Barnwell County. Because we have absolutely no basis upon which to formulate an opinion, we cannot reach a conclusion as to whether membership on the Barnwell County Museum Board may constitute an office.

Thus, as to your third question, this Office is unable to reach a conclusion as we have no basis upon which to formulate a conclusion.

With kindest regards, I am

Sincerely,

*Patricia D. Petway*

Patricia D. Petway  
Assistant Attorney General

PDP/nw  
Enclosures

REVIEWED AND APPROVED BY:

*Robert D. Cook*

Robert D. Cook  
Executive Assistant for Opinions