

The State of South Carolina



Office of the Attorney General

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
TELEPHONE 803-734-3970

September 4, 1987

The Honorable James W. Johnson, Jr.
Member, House of Representatives
Post Office Box 724
Clinton, South Carolina 29325

Dear Representative Johnson:

By your letter of August 25, 1987, you have advised that a member of a local school board has been asked to serve on the Laurens County Long-Range Planning Committee, a creation of Laurens County Council, and also the South Carolina Migratory Waterfowl Committee. You have asked for the opinion of this Office as to whether he may serve as a school board trustee and accept either or both of the pending appointments.

Article XVII, § 1A of the South Carolina Constitution provides that "... no person shall hold two offices of honor or profit at the same time." 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 opined on numerous occasions that one who would serve as a trustee of a local school board would hold an office for dual office holding purposes. As representative of the numerous opinions, enclosed are copies of opinions dated April 24, 1979; July 24, 1980; and September 30, 1981.

In an opinion concerning applicability of the Freedom of Information Act to the Laurens County Long-Range Planning Committee, Op. Atty. Gen. No. 85-145 (enclosed), the Committee was described as follows:

The Honorable James W. Johnson, Jr.
Page 2
September 4, 1987

The ad hoc committee was established as noted above. The members include a member of County Council, the Administrative Assistant for Laurens County Council, and several other citizens who have no connection to Laurens County government. There is no ordinance creating the committee, and the committee is not supported in whole or in part by, nor does it expend, public funds. Members are not paid, and they meet on their own time. The work of the committee involves members' taking "devil's advocate" positions on various matters such as public works, economic development, public health and safety, and so forth, considering benefits and detriments for various proposals with regard to long-range planning.

We have been further advised that a committee member meets individually with persons who have expertise in a particular field; then the committee member prepares and presents a position paper to the ad hoc committee, which then debates the merits of the position paper. Several public meetings are contemplated during January 1986. At the conclusion of the committee's work, a final paper will be prepared for Laurens County Council. At this time it is unknown how council will act upon the recommendations in the final paper: adopt them wholesale without debate, dismiss them entirely, debate them extensively, modify them, or so forth.

Assuming that the Committee is still constituted and presently functions as described above, a citizen serving on the Committee would most probably not be considered as holding an office. The position was not created by statute or ordinance, and membership is at the will of Laurens County Council. Members do not take an oath and are not paid. No duties or qualifications are specified by statute or ordinance. Though the Committee exercises governmental functions sufficient to make the Freedom of Information Act applicable, the exercise of such functions, in conjunction with other criteria of office holding lacking here, would not be sufficient to make the individual serving on the Committee an office holder.

The Honorable James W. Johnson, Jr.
Page 3
September 4, 1987

The South Carolina Migratory Waterfowl Committee is established pursuant to Section 50-11-2135 of the Code of Laws of South Carolina (1986 Cum. Supp.). The Committee is constituted of nine members appointed as described by statute; two each are to be appointed by the Governor, the chairman of the Agriculture and Natural Resources Committee of the House of Representatives, and the chairman of the Fish, Game and Forestry Committee of the Senate. All are required to be "cognizant of waterfowl." A term of three years and until successors are appointed and qualify is specified. Members of the committee are eligible to receive subsistence or per diem. Responsibilities of the Committee are provided in Section 50-11-2135(c) and include: creation of the annual migratory waterfowl stamp, providing the design to the South Carolina Wildlife and Marine Resources Department, and promulgation of regulations relative to creation of migratory waterfowl stamp prints, sale and distribution of the stamps and prints, and so forth. These individuals appear to exercise a portion of the sovereign power of the State. It appears that the six members appointed by the Governor or committee chairmen would meet the criteria usually considered, as described above, and thus would be officers for dual office holding purposes.

Three members of the Migratory Waterfowl Committee are to serve ex officio: the Ducks Unlimited Regional Director for South Carolina and the immediate past and present chairmen of Ducks Unlimited. When one holds an office by virtue of service in another office, or ex officio, the second position or office is not considered an office for dual office holding purposes, as long as the functions of the second office are related to the duties of the first. Ashmore v. Greater Greenville Sewer District, 211 S.C. 77, 44 S.E.2d 88 (1947).

To summarize the foregoing, it is the opinion of this Office that a local school board trustee would be considered a public officer; that a citizen member of the Laurens County Long-Range Planning Committee would not hold a public office; and that an appointed, rather than ex officio, member of the South Carolina Migratory Waterfowl Committee would be a public officer. Thus, the trustee could serve on the Laurens County Long-Range Planning Committee without contravening the dual office prohibitions of the South Carolina Constitution, but serving simultaneously on the South Carolina Migratory Waterfowl Committee would most probably contravene the dual office prohibitions.

The Honorable James W. Johnson, Jr.
Page 4
September 4, 1987

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/rhm

Enclosures

REVIEWED AND APPROVED BY:

Robert D. Cook

Robert D. Cook
Executive Assistant for Opinions