

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

June 1, 1987

Mr. William B. DePass, Jr.
3135 Millwood Avenue
Columbia, South Carolina 29205

Dear Mr. DePass:

By our letter of May 8, 1987, you have asked whether it would be consistent with state law for you to serve on the Election Law Study Committee while you also serve on the Richland County Board of Assessment Appeals. For the reasons following, it appears that simultaneously serving in both positions would most probably contravene the dual office holding prohibitions of the State Constitution.

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).

The Election Law Study Committee was created by the General Assembly by Act No. 273 of 1975, as amended by Act No. 130 of 1985, now codified as Section 2-29-10 of the Code of Laws of South Carolina (1976, as revised). The Committee consists of four Senators, four members of the House of Representatives, and four appointees of the Governor, of whom you are one. Your

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term, you have advised, is coterminus with that of the Governor; Section 2-29-10 provides that you are to serve until your successor has been appointed. No particular oath is required, and no specific qualifications are required. Committee members are to be paid "the usual mileage, per diem, and subsistence provided by law for members of boards, committees, and commissions," according to Section 2-29-10.

Duties specified by Section 2-29-10 include: reviewing election laws on a continuing basis; reporting findings to the General Assembly; recommending legislation; and holding hearings. The Committee may require witnesses to testify and, further, may compel the production of books, papers, or documents and administer oaths. Provisions are found in Section 2-29-10 to bring before the court anyone who fails to produce documents or who should swear falsely. Clearly, duties of this nature would involve an exercise of a portion of the sovereign power of the State.

Considering all of the foregoing factors, one who serves as a member of the Election Law Study Committee would most probably be an officer for dual office holding purposes.

The Richland County Board of Assessment was also created by the General Assembly, by Act No. 952 of 1958, as amended by Act No. 269 of 1967, among others. A term of three years or until one's successor is appointed and qualified is specified in Act No. 269 of 1967, which also contains certain residency requirements. No particular oath is specified. You have advised that a per diem of \$25.00 is paid to Board members. As stated in Act No. 269 of 1967, the Board meets monthly "to act on appeals from the assessments of the tax assessor." This duty necessarily involves an exercise of sovereign power. Because so many of the criteria in Sanders v. Belue and State v. Crenshaw, both supra, have been met, one who would serve on this Board would be deemed to be an office-holder for dual office holding purposes.

Based on the foregoing, one who would serve simultaneously on the Election Law Study Committee and on the Richland County Board of Assessment Appeal would most likely contravene the dual office holding prohibitions of the State Constitution.

We trust that the foregoing has been responsive to your inquiry. If you should need more information on dual office

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holding and how the courts resolve such problems, please feel free to call our Office at any time.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/an

REVIEWED AND APPROVED BY:

Robert D. Cook
Robert D. Cook
Executive Assistant for Opinions