

1984 WL 249898 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 1, 1984

*1 The Honorable Edgar L. McGowan
Commissioner
South Carolina Department of Labor
Post Office Box 11329
Columbia, South Carolina 29211

Dear Commissioner McGowan:

By your letter to Attorney General Medlock dated May 18, 1984, you have asked for an opinion on whether a member of the Occupational Health and Safety Review Board would be a public officer for dual office holding purposes. You also asked whether a board member who is also a state employee, working on contract for one of the state TEC schools, would violate any prohibition against dual compensation for employment by the State.

[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 \(1980\)](#). As you are already aware, this Office has advised that as to the individual's relationship to the TEC school, she is an employee and not an officer. You are now inquiring as to her position on the Review Board even though dual office holding has not been found by this Office. [See Op. Atty. Gen.](#) dated October 5, 1983.

The Occupational Health and Safety Review Board was created by Act No. 113, 1983 Acts and Joint Resolutions, now codified as [Section 41-15-600 et seq., Code of Laws of South Carolina \(1983 Cum. Supp.\)](#). Members of the Board are elected to four-year terms by the resident members of the General Assembly of the congressional district in which the member resides. [See Section 41-15-600\(a\) and \(b\)](#). Compensation, to the extent funds have been appropriated by the General Assembly, is provided for by [Section 41-15-600\(f\)](#), which section also states that service on the board is not creditable service for purposes of the South Carolina Retirement System. Members of the Board must be qualified ‘by reason of training, education, experience, or knowledge of the law’ to be able to carry out the functions of the Board. [See Section 41-15-600\(a\)](#). No oath of office is specified or required, and the individual in question has not been commissioned.

A final indicia of a public office is that the holder exercise some portion of the sovereign power of the State. According to the duties of Board members specified by [Sections 41-15-600\(d\), -610, -630, and -640](#), the Board members do appear to exercise some portion of sovereign power. Members of the Board, as hearing officers, are empowered to conduct hearings, determine the merits, rule on the admissibility of evidence, administer oaths, subpoena witnesses, issue warrants to a sheriff to produce a witness who has failed to appear, and so forth. Such a board member would be termed a quasi-judicial officer, particularly since she is exercising judgment or discretion in the discharge of her duties. [Dunbar v. Fant, 170 S.C. 414, 170 S.E. 460 \(1933\)](#); [see also Op. Atty. Gen.](#) dated December 16, 1983 (administrative law judge is a public officer). Considering all of the indicia, this office concludes that a member of the Occupational Health and Safety Review Board would most probably be considered an officer for dual office holding purposes.

*2 This Office issued an opinion concerning a similar combination of State employee (of the Department of Labor) and public officer (as Highway Commissioner) on March 27, 1984 (copy enclosed) and dealt with compensation problems therein. We suggest that the same approach to dual compensation should be applied in this instance.

We hope that this opinion resolves the difficulty that the various agencies have experienced in this matter. Please advise us if additional information or clarification is needed.

Sincerely,

Patricia D. Petway
Staff Attorney

1984 WL 249898 (S.C.A.G.)

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.