

1983 WL 181716 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 19, 1983

*1 Mrs. Jean E. Crouch
Box 632F
Saluda, South Carolina 29138

Dear Mrs. Crouch:

You have requested the opinion of this Office on the question of whether a person serving concurrently on the Saluda County Airport Commission and on the Saluda County Nursing Home Board would be in violation of the provisions of the South Carolina Constitution prohibiting dual office holding. You have further asked about the effect dual office holding would have on votes cast by a person while performing the duties of these two offices.

It is provided in [Article XVII, § 1A of the South Carolina Constitution](#) 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 \(1907\)](#). 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, 266 S.E.2d 61 \(1980\)](#).

The Saluda County Airport Commission was created by Act No. 168 of the 1949 Statutes at Large. The duties and powers of this Commission are set forth in Sections 2 through 4 of the Act and include the authority to administer aeronautical laws and handle all matters affecting the airports of Saluda County. It is given general authority over the lands and funds provided for airports and aeronautical activities in Saluda County. These functions involve an exercise of the sovereign power of the State and, therefore, members of the Saluda County Airport Commission hold offices within the meaning of the dual office holding provisions of the Constitution. This conclusion is in keeping with prior opinions of this Office which have considered other county airport commissions in the dual office holding context. [See, 1975 Op. Att’y. Gen. 4001](#); and Opinion dated November 9, 1982 to Mr. Wright (copies enclosed).

The Saluda County Nursing Home Board was created pursuant to Act No. 1391 of the 1966 Statutes at Large. Its powers and duties are set forth in Sections 2 through 6 of the Act and include the general authority to build and equip a nursing home to meet the needs of Saluda County, to accept gifts, bequests or grants on behalf of the County for the nursing home, to control the funds provided for the operation of the nursing home, and to borrow money for the building of the home. Care of the elderly undoubtedly falls within the sovereign power of the State, and the powers and duties given to the members of the Saluda County Nursing Home Board indicate that the board members hold positions of responsibility in carrying out this function. It is the conclusion of this Office, therefore, that members of the Saluda County Nursing Home Board hold offices in the constitutional sense.

*2 Based on the foregoing, it is the opinion of this Office that a person serving concurrently on the Saluda County Airport Commission and on the Saluda County Nursing Home Board would be in violation of the dual office holding provisions of the South Carolina Constitution.

As to your second question concerning the effect of dual office holding, I have enclosed a lengthy prior opinion of this Office which addresses this very issue. In summary, that opinion recites the general rule that upon assumption of a second office a person is deemed to have abandoned his first office. The person is only a de facto officer as regards the first office. As a de facto officer he is not entitled to any of the emoluments of the first office, but his de facto status does not affect his acts as concerns

the general public. The rationale behind this conclusion is that the public cannot be compelled to inquire as to whether officers with whom they deal hold valid title to their office. See, 1961 Op. Att'y. Gen. No. 1125 (copy enclosed), and authority cited therein. Therefore, the votes of a person serving concurrently on the Saluda County Airport Commission and on the Saluda County Nursing Home Board would probably not be effected by the existence of dual office holding, although the person would hold one of those offices (the first office accepted) on a de facto basis only.

Very truly yours,

Helen T. Zeigler
Assistant Attorney General

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