

1983 WL 181738 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 8, 1983

*1 O. Terry Beverly, Esquire
City Attorney
Post Office Box 1506
Conway, South Carolina 29526

Dear Mr. Beverly:

You have requested the opinion of this Office on the question of whether it is a violation of the dual office holding provisions of the South Carolina Constitution for a member of the Conway City Planning Commission to serve concurrently on the Horry County Board of Education.

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 ordinance establishing the Conway City Planning Commission reveals that it was created pursuant to [sections 5-23-410, et seq., Code of Laws of South Carolina, 1976](#) (formerly Article 2 of Title 47, S.C. Code of 1962). This Office has previously considered other City Planning Commissions similarly created and concluded that members of these Commissions hold offices within the meaning of the dual office holding provisions of the Constitution. [See, 1976 Op. Att’y. Gen. No. 4336; and Opinion dated June 26, 1978 to C.W.F. Spencer](#) (copies enclosed). This conclusion is based on several factors, among them being the Commission's authority to contract for services as it may require, expend funds appropriated for its use, adopt a master plan for the physical development of the city, hold public hearings, and approve any changes made to the master plan. The Commission is furthermore empowered to prepare regulations governing approval of subdivision plats and to approve streets in new subdivisions.

The terms of office of the Commission members are established by law and are exercised on a continuing basis. The powers and duties of the Commission members as described above are public in nature and involve an exercise of the sovereign power of the State. Therefore, a person serving on the Conway City Planning Commission would be an officer for dual office holding purposes.

The Horry County Board of Education was established by Act No. 754 of the 1952 Acts and Joint Resolutions and the terms and duties of its members were initially provided for therein. It is given the central authority over the Horry County educational system and is specifically authorized to promulgate rules and regulations for the efficient operation of the schools, issue bonds for construction, repair and maintenance of buildings, exercise the right of eminent domain, approve all expenditures against the Horry County school fund, and prepare the annual budget. These functions undoubtedly involve an exercise of the sovereign power of the State, and the board members would be considered officers under the State Constitution. This conclusion is in keeping with prior opinions of this Office which have considered other County Boards of Education. [See, e.g., 1967 Op. Att’y. Gen., No. 2328](#) (copy enclosed).

*2 As to the effect of dual office holding, a person is deemed to have abandoned his first office when a second office is accepted. [Darling v. Brunson, 94 S.C. 207 \(1912\)](#). He serves in the first office in a defacto capacity only, however, his actions

are considered valid as effects the general public. [Walker v. Harris, 170 S.C. 242](#); and 1961 Op. Att'y. Gen. No. 1125 (copy enclosed).

Based on the foregoing, it is the opinion of this Office that a person serving concurrently on the Conway City Planning Commission and on the Horry County Board of Education would be in violation of the provisions of the South Carolina Constitution prohibiting dual office holding.

Very truly yours,

Helen T. Zeigler
Assistant Attorney General

ATTACHMENT
February 8, 1983
Honorable Richard W. Riley

Governor, State of South Carolina

State House

Columbia, South Carolina 29211

Dear Governor Riley:

Enclosed please find the opinion the opinion of this office which you requested on the spending limitation of Act No. 517, Part II, Section 12 of the Acts of 1980. The opinion does not specifically address the transfer of funds to restore the general reserve fund to the constitutionally required level. The opinion of this office is that such transfer of funds is not an appropriation or expenditure and is not within the spending limitation. However, as the opinion states, appropriations from the general reserve fund are subject to the limitation.

Sincerely,

F. Travis Medlock
Attorney General

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