

1984 WL 249978 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 6, 1984

*1 Thomas M. Boulware, Esquire
Barnwell County Attorney
Post Office Box 248
Barnwell, South Carolina 29812

Dear Mr. Boulware:

By your letter of August 27, 1984, you have asked the opinion of this Office on whether an individual serving simultaneously as a member of Williston City Council and on the Barnwell County Hospital and Nursing Home Board would contravene the dual office holding provisions of the Constitution of the State of South Carolina. It is the opinion of this Office that one person serving simultaneously in both positions most likely would hold dual offices in contravention of the Constitution.

[Article XVII, Section 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 first position to be considered is that of a city council member. This Office has repeatedly advised that a member of a city council is an officer for dual office holding purposes. [See, Ops.Atty. Gen.](#) dated July 8, 1982; September 7, 1982; June 18, 1982; January 31, 1984; and August 29, 1984 (copy of this opinion enclosed).

The other position to be considered is that of a member of the Barnwell County Hospital and Nursing Home Board. The Hospital Board was initially established by Act No. 298, 1953 Acts and Joint Resolutions, and the Nursing Home Board by Act No. 1155, 1964 Acts and Joint Resolutions. The two boards and their respective functions were consolidated as the Barnwell County Hospital and Nursing Home Board by Act No. 1455, 1968 Acts and Joint Resolutions. Board members have a tenure of four years. [See, Section 1, Act No. 1455](#). There are no provisions for an oath of office, salary or qualifications. The duties do appear to be an exercise of a portion of the sovereign power of the State. Section 1 of Act No. 298 establishes the Hospital Board ‘to provide hospital facilities for the inhabitants of the county.’ By Act No. 298, duties of the board include the acquisition of real estate; accepting grants-in-aid, donations, and so forth; construction of the hospital; adoption of rules and regulations; personnel matters; and others. By Act No. 1155, board members are empowered to construct and equip a nursing home; employ personnel; accept gifts and grants; borrow money; and others. By Act No. 1455, powers and duties were to continue from the previous acts. It would appear that the Barnwell County Hospital and Nursing Home Board is acting for the inhabitants of the county. All factors considered, the members of the Board are thus most probably officers for dual office holding purposes. [See also, Op.Atty.Gen.](#) dated August 29, 1984.

*2 In conclusion, based on the foregoing, it is the opinion of this Office that one who would serve simultaneously on Williston City Council and as a member of the Barnwell County Hospital and Nursing Home Board would most probably violate the dual office holding provisions of the State Constitution.

Sincerely,

Patricia D. Petway

Assistant Attorney General

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