

1981 WL 158071 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

December 10, 1981

*1 The Honorable Jarvis R. Klapman
Member
House of Representatives
125 Hendrix Street
West Columbia, South Carolina 29169

Dear Representative Klapman:

You have asked the opinion of this Office on the question of whether a person may serve concurrently as a member of the Richland—Lexington Counties Commission for Technical Education and a member of the Board of Directors of the Lexington—Richland Alcohol and Drug Abuse Council.

[Article XVII, § 1A of the South Carolina Constitution](#) states that ‘. . . no person shall hold two offices of honor and profit at the same time.’ Also see Article VI, § 3. 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 criteria such as tenure, duties, salary, oath, etc., also may be relevant. [State v. Crenshaw](#), South Carolina Supreme Court, Op. No. 21189, 4-9-80.

Membership on the Richland—Lexington Counties Commission for Technical Education is expressly made an office within the meaning of [Article XVII, § 1A of the Constitution](#) by Section 59-53-1610, Code of Laws of South Carolina, 1976.

The Lexington—Richland Alcohol and Drug Abuse Council and its Board of Directors is a governmental agency created by certain ordinances of Richland [Ordinance No. 439-77HR and 669-80HR] and Lexington [Ordinance No. 1, Final Reading 1-11-78] Counties [copies of these ordinances are attached]. The ordinances provide, among other things, for the appointment of the Board of Directors, empower the board to establish agency policies, require the agency to make certain financial reports to the two County Councils, and direct the Board of Directors to prepare an annual substance abuse service plan. The ordinances also note that the agency was to be created to receive mini-bottle tax rebate funds. The disbursement of these tax funds is provided for by Sections 61-5-150 and 61-5-30 to [61-5-380 of the Code](#), as amended. These sections provide that these tax funds shall be disbursed to agencies designated by the governing bodies of the counties for alcohol and drug abuse planning, the rehabilitation of alcoholics and drug addicts and for related educational purposes.

Taking into account the public purpose of the Council, its creation and regulation by county ordinances and state statutes, and its expenditure of public tax funds, membership on its Board of Directors would constitute an office charged by law with an exercise of a portion of the sovereign power of the State. See Ops. Atty. Gen'l., July 2, 1975, [Dual Office Holding No. 663] (Similar conclusions reached with regard to a county commission on alcohol and drug abuse created under different but similar statutes.) The establishment of the Council and Board by county ordinances rather than state statutes does not render inapplicable the constitutional provisions on dual office holding. [Darling v. Brunson, 94 S.C. 207 \(1913\)](#); Ops. Atty. Gen'l., No. 1639, 1964.

*2 Based on the foregoing, it is the opinion of this Office that a person concurrently serving as a member of the Richland—Lexington Counties Commission on Technical Education and the Board of Directors of the Lexington—Richland Alcohol and Drug Abuse Council would be in violation of the constitutional provisions prohibiting dual office holding.

Sincerely,

James M. Holly
Assistant Attorney General

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