

1982 WL 189413 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 3, 1982

*1 Francis K. Sullivan
Executive Secretary
Charleston County Legislative Delegation
Post Office Box 487
Charleston, South Carolina

Dear Mr. Sullivan:

You have requested the opinion of this office on the question of whether it would be a violation of the dual office holding provisions of the South Carolina Constitution for a Magistrate to also serve on a local Foster Care Review Board.

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 \(1980\)](#).

This office has consistently held in previous opinions that Magistrates hold offices within the meaning of the dual office holding provisions of the Constitution. *See*, 1977 Op. Att’y. Gen. 397 at p. 325; Op. dated, July 7, 1977 to Mr. Detwiler (copy enclosed); Op. dated October 16, 1980, to Rep. Pracht (copy enclosed). Positions on local Foster Care Review Boards present a more difficult question. These Boards are established pursuant to [§ 20-7-2400 of the Code of Laws of South Carolina, 1976](#), as amended, and their members are appointed by the Governor upon the recommendation of the appropriate legislative delegations. They are authorized pursuant to [§ 20-7-1630 of the Code of Laws of South Carolina, 1976](#), as amended, to perform several advisory and supervisory functions regarding the welfare and placement of foster children, but also appear to be given authority under subsections 2 of that statute to make determinations concerning the return of foster children to their natural parents. In this regard, they are empowered to initiate, or to direct the appropriate agency to initiate, the necessary procedures to make certain foster children eligible for adoption. Furthermore, persons or agencies aggrieved by any actions or decisions of a Local Review Board are given the right pursuant to [§ 20-7-1640 of the Code of Laws of South Carolina, 1976](#), as amended, to receive a hearing before the board. This decision making authority and the resultant review process indicate that local Foster Care Review Boards do exercise a portion of the sovereign power of the State and their members would, therefore, hold offices in the constitutional sense. This conclusion is not, however, free from doubt and depends to a large extent upon an interpretation of [§ 20-7-1630\(2\)](#) as conferring upon the boards more than mere advisory or recommendatory powers.

Based on the foregoing, it is the opinion of this office that a person could not serve concurrently as a Magistrate and a member of a Foster Care Review Board without violating the dual office holding provisions of the South Carolina Constitution.

Very truly yours,

*2 Helen T. Zeigler
Assitant Attorney General

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