

1980 WL 121090 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 11, 1980

\*1 Honorable Thomas E. Smith, Jr.

Member

South Carolina Senate

Gressette Senate Office Building

Post Office Box 142, Suite 512

Columbia, South Carolina 29202

Dear Senator Smith:

In response to your request for an opinion from this Office as to whether or not a legislator may serve as a member of the Pee Dee Regional Health Services District Board of Directors (District Board), my opinion is that he may not because of the provisions of [Article III, Section 24 of the South Carolina Constitution](#) which prohibit dual office-holding by legislators. Although there is some authority to the effect that a legislator may serve on certain other public bodies without violating the dual office-holding provisions of the State Constitution, that service has been limited to bodies as to which membership is of an ex officio nature, *i.e.*, by virtue of his office as a legislator. *See, e.g.*, 1976-77 Ops.Atty. Gen. No. 171 at 136 (a copy of which is enclosed herewith); *cf.*, Ops. Atty.Gen. No. 77-41 at 42; [Ashmore v. Greater Greenville Sewer District, 211 S.C. 77, 44 S.E.2d 88 \(1947\)](#). Membership upon the District Board is not ex officio membership but, instead, is prescribed by [Sections 44-7-2020 and 44-7-2110, CODE OF LAWS OF SOUTH CAROLINA, 1976](#), as amended (Cum.Supp.) as follows:

The corporate powers and duties of the district shall be exercised by a board of directors (hereinafter called the board of such number of members as the enactment shall direct to be filled by residents of the perspective counties in the district, as provided in the enactment, so as to provide for reasonable representation from each county in the district. Board members shall be appointed by the Governor upon recommendation of the county governing body as to the respective seats provided for such county.

While [Section 44-7-2100 of the Code](#) does authorize the District Board to appoint 'ex officio directors for the purpose of availing itself of specialized talents, knowledge or counsel,' I think that a legislator appointed pursuant thereto would have the burden of establishing the requisite specialized talents, knowledge or counsel.

With kind regards,

Karen LeCraft Henderson

Senior Assistant Attorney General

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