

1980 WL 121039 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 13, 1980

***1 Re: Dual Office-Holding**

The Honorable Robert C. Cleveland
Commissioner of Banking
State Board of Financial Institutions
1026 Sumter Street, Room 217
Columbia, South Carolina 29201

Dear Mr. Cleveland:

The have asked the opinion of this Office on whether it would be a violation of the constitutional provision prohibiting dual office-holding for an individual employed as an assistant examiner of savings and loan associations and serving concurrently as a Governor's appointee to the State Reorganization Commission.

[Article VI, § 3 of the South Carolina Constitution](#) provides that 'No person shall hold two offices of honor and profit at the same time. . .' [See also](#), Article XVII, § 1A. For this provision to be contravened, a person must hold concurrently two 'public offices' with duties involving an exercise of some part of the sovereign power of the State. [Sanders v. Belue, 78 S.C. 171, 58 S.E.2d 762 \(1907\)](#).

The State Reorganization Commission, which is composed of nineteen members, is established by Section 1-19-10, [et seq.](#), of the South Carolina Code of Laws (1976). The general powers of the Commission are prescribed in the statute and include the examination of the organization and functioning of various executive and administrative agencies to determine their efficiency. The statute also grants the Commission numerous powers to carry out its duty to prepare a reorganization plan for state government, including the authority to conduct hearings, take testimony, subpoena documents, hold contempt proceedings, etc. [See](#), Sections 1-19-130, [et seq.](#), of the Code; [see also](#), Sections 1-20-10, [et seq.](#) For budgetary purposes, the Commission is accorded equal treatment with other state agencies, as indicated by the 1979 General Appropriations Act (No. 199), and the Commission apparently controls the expenditure of its appropriated funds. It is clear that the exercise of the powers just enumerated would constitute the 'exercise of the sovereign power,' so as to make a Commission member a 'public officer' for purposes of dual office holding.

On the other hand, the position of assistant examiner is not created by statute, although the Commissioner of Banking is authorized by [Section 34-1-80 of the Code](#) to employ such assistants as necessary to carry out the duties of the Board of Financial Institutions. Moreover, there is no reference in this Section to any powers or duties of an assistant examiner. In [Sanders v. Belue, supra](#), the Court held:

[O]ne who merely performs the duties required of him by persons employing him under an express contract or otherwise though such persons be themselves public officers, and though the employment be in or about a public work or business, is a mere employee.

It is the opinion of this Office that since an assistant examiner does not exercise the sovereign power, the position would not be an 'office' under the dual office-holding provisions of the South Carolina Constitution.

*2 Therefore, in conclusion, an individual may concurrently hold the dual positions of State Reorganization Commission member and assistant examiner with the Board of Financial Institutions. No opinion is expressed herein with regard to possible conflicts of interest that might arise from such dual positions.

If I can be of further assistance to you in this matter, please do not hesitate to contact me.

Very truly yours,

Richard B. Kale, Jr.
Senior Assistant Attorney General

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