

1977 S.C. Op. Atty. Gen. 214 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-277, 1977 WL 24617

Office of the Attorney General

State of South Carolina

Opinion No. 77-277

September 7, 1977

*1 TO: Ms. Barbara A. Jackson
Statewide Health Coordinating Council

QUESTION:

Does the holding of positions as a member of the Statewide Health Coordinating Council and as a local school district trustee violate the Constitutional prohibition against dual office holding?

STATUTES, CASES OPINIONS AND CONSTITUTIONAL PROVISIONS:

[Edge v. Town of Cayce](#), 187 S.C. 172, 197 S.E. 216

[Sanders v. Belue](#), 78 S.C. 171, 58 S.E. 762

S.C. CONSTITUTION, art. XVII, § 1A

[42 U.S.C. 300m-3\(b\)](#)

[42 U.S.C. 300m-3\(c\)](#)

1964 OP.ATTY.GEN., No. 1669

1966 Op.ATTY.GEN., No. 2206

1971 OP.ATTY.GEN., No. 3130

1974 Op.ATTY.GEN., No. 3755

DISCUSSION:

Article XVII, § 1A provides in part that ‘no person shall hold two offices of honor or profit at the same time.’ Clearly, the position of school district trustee is an ‘office’ within the meaning of the constitutional provision. 1964 OP.ATTY.GEN., No. 1669.

The other position in question, membership on the State Health Coordinating Council (SHCC), is a federal position. SHCC was created pursuant to [42 U.S.C. 300m-3\(b\) and \(c\)](#). This statute sets forth the number, qualifications and manner of selection of members. It also specifically designates the various functions of the SHCC, and provides for the issuance to the Secretary of Health, Education and Welfare of periodic reports by SHCC regarding various State health programs. Thus, it is seen that SHCC was created by Federal law rather than State law.

As a Federal position, membership on SHCC does not constitute an 'office' within the meaning of Article XVII, § 1A of South Carolina's Constitution, and, therefore, one could serve on SHCC at the same time he or she served as a school district trustee. This view is consistent with previous opinions of this office. 1966 OP.ATTY.GEN., No. 2206; 1971 OP.ATTY.GEN., No. 3310; 1974 OP.ATTY.GEN., No. 3755. There are two primary reasons for this rule: 1) The test to determine whether a person occupying a certain position is an 'officer' within the Constitution's prohibition as to dual office holding is whether some portion of the sovereignty of the State is exercised in the proper discharge of the office. [Sanders v. Belue](#), 78 S.C. 171, 58 S.E. 762; [Edge v. Town of Cayee](#), 187 S.C. 172, 197 S.E. 216.

Because a Federal officer or employee exercises only Federal sovereignty, the officer or employee fails to satisfy the test and therefore could not be a State 'officer.' 2) Additionally, the above-cited opinions note that the Constitution normally is very specific in prohibiting certain officers such as judges, the Governor, etc., from holding offices under both the State and Federal Government. However, Article XVII, § 1A does not specify what is and is not prohibited. Because the provisions relating to other State officers are made very specific, and because laws similar to each other must be construed in pari materia, the clear inference is that the Framers of the Constitution did not intend for Federal offices (assuming arguendo membership on SHCC is an office) to be included within the purview of Article XVII, § 1A.

CONCLUSION:

*2 Therefore, it is the opinion of this office that membership on SHCC and service as a school board trustee does not constitute dual office holding within the meaning of Article XVII, § 1A of South Carolina's Constitution.

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