

1976 S.C. Op. Atty. Gen. 121 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4302, 1976 WL 22922

Office of the Attorney General

State of South Carolina

Opinion No. 4302

March 19, 1976

*1 Mr. Henry G. McNeill
Route 1
Fair Bluff, North Carolina 28439

Dear Mr. McNeill:

This Office heretofore advised you by letter dated February 20, 1976, that a position of member of the board of directors of a rural electric cooperative constituted an office and that the holding of another office, such as member of the governing body of Horry County, would be in violation of the dual officeholding provision of the Constitution of this State.

I have reviewed that opinion at the request of the Horry County Delegation and it is my opinion that it overlooked consideration of cases decided under the statute relating to rural electric cooperatives. These organizations are essentially private organizations, being termed by the Supreme Court as cooperative associations. The Court has further held that they are not governmental agencies, although it is somewhat difficult to distinguish them from housing authorities and organizations, such as the South Carolina Public Service Authority. The latter organizations have been held to be governmental agencies, or at least quasi-governmental agencies. Rural cooperatives have the power of eminent domain, just as do many other probate corporations, and they occupy a special and favored position under the South Carolina statutes. They are subject to tort liability, which is not true with respect to governmental agencies, and while they perform a public function, they are a private organization operated for the benefit of its members.

While there is some basis for an argument to the contrary, it is my opinion that your position as an officer of a rural electric cooperative is not an office within the meaning of the constitutional provision and that you may therefore hold such position in the cooperative and, at the same time, serve as a member of the governing body of a county without violating the dual officeholding provisions of the Constitution of this State.

Very truly yours,

Daniel R. McLeod
Attorney General

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