

1976 S.C. Op. Atty. Gen. 100 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4287, 1976 WL 22907

Office of the Attorney General

State of South Carolina

Opinion No. 4287

March 8, 1976

*1 At a minimum, the simultaneous holding of a Title XX—related employment position and a Board of Social Services membership would create a conflict of interest, requiring disqualification from voting as to Board decisions relating to Central Midlands Title XX funding. The circumstances of any given Board decision could work further conflicts.

TO: William N. Gray
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QUESTION PRESENTED:

Whether an employee with the Central Midlands Regional Council whose employment is funded with and relates to Title XX funds may, if elected, contemporaneously serve on the Board of the Department of Social Services?

STATUTES, CASES, ETC., INVOLVED:

South Carolina Constitution, Article XVII, Section 1A, and Article VI, Section 3;

Code of Laws of South Carolina, 1962, Section 1–360.41, et seq., as amended, Section 14–343 et seq., as amended, Section 71–1 et seq., as amended;

[Sanders, et al. v. Belue, et al.](#), 58 S.E. 762, 78 S.C. 171 (1907).

Letter Opinions, Attorney General: January 3, 1975; April 14, 1975.

DISCUSSION:

The facts, as given to this Office, reveal the following employment responsibilities for a ‘Planner of Human Resources for Title XX’:

1. Planning for human services in the Midland Region;
2. Preparing a regional plan for Title XX;
3. Reviewing, along with a task force, applications for Title XX funds; and
4. Holding public hearings for Title XX

Most importantly, the employment position is funded with Title XX monies.

The Board of Social Services, on the other hand, is the governing body for the State Department of Social Services. See Section 71–1 of the 1962 Code, as amended. Among the responsibilities of the Department of Social Services, and hence,

subject to the control of the Board of Social Services, is the Administration of Title XX Grants to State for (Social) Services monies.

Probability suggests, then, that members of the Board of Social Services will be called upon to make decisions affecting directly and indirectly the employment position of a 'Planner for Human Resources for Title XX'. An example of affectation is the Board's ultimate responsibility to approve funding for the position itself. The propriety of maintaining, simultaneously, both positions reduces itself to three questions. First, would activity in both responsibilities constitute dual-office holding? Second, what provisions of the State's recently enacted ethics legislation affect the dual relationship? See Section 1-360.41, *et seq.*, of the 1962 Code, as amended. Third, apart from statutory provisions, would the dual relationship create an unacceptable conflict of interest? The ultimate answer to each question depends upon the particular interests and decisions and the context in which they occur. The following information however, offers general guidelines and, where a clear conflict appears, draws that point.

***2** For purposes of the Article XVII, Section 1A, and Article VI, Section 3, Constitutional provisions against dual-office holding, the State Supreme Court has defined an 'officer' as follows:

One who is charged by law with duties involving an exercise of some part of the sovereign power . . . in the performance of which the public is concerned, and which are continuing and not occasional or intermittent . . . [Sanders, et al. v. Belue, et al.](#), 58 S.E. 762, 78 S.C. 171 (1907).

Pursuant to the provisions of Section 71-1, *et seq.*, of the Code as amended, members of the Board of Social Services clearly exercise some part of the sovereign power. On the other hand, the provisions of Section 14-343, *et seq.*, of the Code as amended, do not provide for the position of 'Planner' nor for the duties of that position. Consequently, it is concluded that a 'Planner' would not exercise any portion of the sovereign power and would be simply an employee. Thus, no dual-office holding problem exists.

The State's recently enacted ethics legislation sets forth a procedure to be used by a public official or a public employee where his decision, in his opinion, would 'substantially affect directly his personal financial interest.' See Section 1-360.56 of the 1962 Code, as amended. In essence, that statute provides that an employee shall provide a written explanation of the conflict to his superior who shall then assign the matter to another employee. If the public official or employee has no supervisor, the individual shall take such steps as the State Ethics Commission requires. These procedures may be considered in the discussion of the third element of conflict analysis.

As regards a pure conflict of interest, this Office has stated that an unacceptable conflict exists when an individual, in one of his positions, may be called upon to make a decision which will accrue to his benefit in the other position. Letter Opinions. January 3, 1975, April 14, 1975. The latter opinion specifically mentions the situation where the public officer becomes both the employer and the employee. To the extent that a Board member is called upon to vote funding for his employee position, that situation would exist. Disqualification from voting on such a situation would be appropriate, perhaps in the fashion as indicated by the Ethics Legislation. Since the Board and the Department of Social Services are responsible for Title XX projects and since the 'Planner' position is completely related as described to Title XX, any Board vote relating to Title XX and the Central Midlands Regional Planning Council would appear to require disqualification.

The answer to the question of conflicts in other situations is less clear and will vary with the facts.

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