



ALAN WILSON
ATTORNEY GENERAL

August 28, 2025

The Honorable Ronnie Cromer, Member
South Carolina Senate
410 Gressette Bldg.
Columbia, SC 29201

Dear Senator Cromer:

You have asked a dual office holding question. You have a constituent presently serving on the Newberry County Hospital Board. You would like to recommend this individual to serve on the Newberry County Elections Commission. You wish to know "whether one person may lawfully serve on both boards simultaneously." It is our opinion that the simultaneous service in both positions would constitute dual office holding as prohibited by Article XVII, § 1A of the South Carolina Constitution.

Article XVII, Section 1A of the South Carolina Constitution provides that "No person may hold two offices of honor or profit at the same time, but any person holding another office may at the same time be an officer in the militia, member of a lawfully and regularly organized fire department, constable, or a notary public." For this provision to be contravened, a person concurrently must hold two public offices which have duties involving an exercise of some portion of the sovereign power of the State. *Sanders v. Belue*, 78 S.C. 171, 58 S.E. 762 (1907). "One who is charged by law with duties involving an exercise of some part of the sovereign power, either small or great, in the performance of which the public is concerned, and which are continuing, and not occasional or intermittent, is a public officer." *Id.*, 58 S.E. 762, 763. Other relevant considerations are whether statutes, or other such authority, establish the position, prescribe its tenure, duties or salary, or require qualifications or an oath for the position. *State v. Crenshaw*, 274 S.C. 475, 266 S.E.2d 61 (1980).

While we are not aware of a prior opinion specifically addressing whether a member of the Newberry County Hospital Board is an "office" for dual office holding purposes, we have consistently concluded that members of other county hospital boards are officers. See *Op. S.C. Att'y Gen.*, 2017 1955653 (May 4, 2017 and opinions referenced therein). The Newberry County Hospital Board of Trustees was established by Act No. 808 of 1971, as amended by Act No. 809 of 1971. Among the Board's many powers, is the authority to set rates and charges, to acquire real and personal property and to adopt bylaws, rules and regulations for the conduct of

its business. Clearly, consistent with our other opinions, the Hospital Board exercises sovereign powers.

Likewise, members of the Newberry County Board of Voter Registration and elections hold an office for dual office holding purposes. Without question, these boards exercise sovereign powers. As we have previously stated, “. . . we have consistently concluded that other members of various election commissions and voter registration boards throughout the state are office holders.” Op. S.C. Att’y Gen., 2004 WL 1683028 (July 9, 2004 and opinions cited therein). Thus, simultaneously serving on both boards would constitute dual office holding.

Finally, we have advised the following with respect to dual office holding:

. . .we advise that this office has consistently been of the opinion that when a dual office holding situation occurs, the law operates to automatically "cure" the problem. Thus, if an individual holds one office on the date he assumes a second office, assuming both offices fall within the purview of Article XVII, § 1A (or one of the other applicable constitutional prohibitions against dual office holding), that person is deemed by law to have vacated the first office. See Ops. S.C. Att’y Gen., March 16, 2012; July 28, 2003; July 31, 2000; July 13, 1995. However, the individual may continue to perform the duties of the previously held office as a *de facto* officer until a successor is duly selected to assume the duties or complete the term of office. See Walker v. Harris, 170 S.C. 242, 170 S.E. 270 (1933); State v. Coleman, 54 S.C. 282, 32 S.E. 406 (1898); While the actions taken by a *de facto* officer are generally held to be valid with regard to third parties, there is no question that such officer is acting under color of law rather than with full *de jure* status which he would possess if there had been no dual office holding. Furthermore, there exists general authority that the protections afforded a *de facto* officer will not be deemed to continue indefinitely, particularly when the public is chargeable with notice that the officer's status has been reduced to one of *de facto* rather than *de jure*. See State ex rel. McLeod v. Court of Probate of Colleton County, 266 S.C. 279, 223 S.E.2d 166 (1976); Ops. S.C. Att’y Gen., March 16, 2012; May 7, 1998. This *de facto* capacity does carry with it some risk, however. While a *de facto* officer's actions are generally held to be valid with regard to third parties, it is possible that a court might find that the actions of a *de facto* officer are invalid. In this instance, for example, an arson investigator charged with police powers in this State may be performing those duties in a *de facto*, rather than *de jure* capacity. Accordingly, we advise that the wisest course of action in this case would be for such individual to avoid a situation where his/her actions could be called into question. See Op. S.C. Att’y Gen., July 28, 2003.

Op. S.C. Att’y Gen., 2012 WL 3142775 (July 19, 2012).

The Honorable Ronnie Cromer
Page 3
August 28, 2025

Sincerely,

A handwritten signature in blue ink, appearing to read "Robert D. Cook". The signature is fluid and cursive, with the first name "Robert" being more prominent and the last name "Cook" following in a similar style.

Robert D. Cook
Solicitor General Emeritus