

1972 WL 25313 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 12, 1972

*1 The Honorable Lake Ellis
Chairman
The Board of Pharmaceutical Examiners
State of South Carolina
2805 Anderson Road
Greenville, South Carolina

Dear Dr. Ellis:

You have recently inquired with respect to the following questions:

1. Can the Board of Pharmaceutical Examiners recommend to the Governor for appointment as Chief Drug Inspector the names of two persons rather than one person?

This recommendation is made pursuant to the provisions of Section 15-1324, Code of Laws of South Carolina, 1962, which provides:

‘On the first day of July in every presidential election year the Governor, upon the recommendation of a majority of the State Board of Pharmaceutical Examiners, shall appoint and commission a chief drug inspector.’

It is my opinion that the Board is required to make a recommendation of only one person. The discretion with respect to such recommendation is vested in the Board and not in the Governor. He is required to accept and appoint the individual recommended to him by the Board. [Blalock v. Johnston](#), 180 S.C. 40, 185 S.E. 51. Where the General Assembly intended that several nominees be submitted to the Governor, it has so specifically stated. See, for example, Section 56-453, Code of Laws of S. C., 1962, relating to the Board of Cosmetic Art Examiners, which authorities a list of names to be submitted to the Governor, from which he may make a selection. With respect to the Chief Drug Inspector, there is no such provision, and it is mandatory upon the Board, in the opinion of this Office, that one nominee only be submitted to the Governor for appointment.

2. May the Board of pharmaceutical Examiners submit the names of two nominees to the Governor, with the proviso that upon an indication of preference by the Governor, the Board, or majority thereof, would submit this name to the Governor?

As indicated above, the selection of the nominee is vested in the Board, and it must make its own determination as to who that nominee shall be. If the Board wishes to informally discuss the matter with the Governor, or anyone else, it may do so, and make its decision accordingly. The Board may thereafter submit it to the Governor, but it cannot properly, and within the terms of the statute, formally submit two names to the Governor and ask him to determine which of the two shall be recommended for appointment.

3. Can the Chief Drug Inspector, appointed pursuant to Section 56-1324, Code of Laws of S. C., 1962, be employed also by the State Board of Health, pursuant to the provisions of Section 32-1510.60(3)(b) of the Narcotics and Controlled Substances Law of 1971?

The latter section provides, in part, that:

‘The State Board of Health shall be primarily responsible for making accountability audits of the supply and inventory of controlled substances in the possession of pharmacists, doctors, hospitals, health care facilities, and other practitioners—.

*2 The former statute provides for the creation of the office of Chief Drug Inspector, who is appointed by the Governor upon recommendation of the Board of Pharmaceutical Examiners.

The Chief Drug Inspector is, in the opinion of this Office, an officer within the meaning of the dual officeholding provisions of the State Constitution. The individual appointed to implement the powers vested in the Board of Health under the Narcotics and Controlled Substances Law is not an officer but an employee, irrespective of the designation of the position given by the Board of Health. The same individual may, therefore, occupy both positions, but he cannot receive compensation from two departments unless the consent of the State Budget and Control Board is received. The dual officeholding provision of the Constitution would not be offended in such circumstances.

If there is any further question regarding this matter, please feel free to call upon me.

Very truly yours,

Daniel R. McLeod
Attorney General

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