

1972 S.C. Op. Atty. Gen. 140 (S.C.A.G.), 1972 S.C. Op. Atty. Gen. No. 3319, 1972 WL 20458

Office of the Attorney General

State of South Carolina

Opinion No. 3319

May 25, 1972

**\*1 Re: Pollution Control Authority, S. C. (Charleston County Pollution Control Board)**

Cecil F. Jacobs, M. D., M. P. H.  
Director  
Charleston County Health  
Department  
334 Calhoun Street  
Charleston, South Carolina 29401

Dear Doctor Jacobs:

By your letter of May 11, 1972, you have requested an opinion from this office relating basically to the extent of control the Pollution Control Authority can exercise over local air pollution control boards established under the provisions of Section 34 of the 1970 Pollution Control Act.

This section provides that such programs are subject to the approval of the Authority, must be formulated in accordance with standards and procedures adopted by the Authority, are subject to periodic review by the Authority and can be invalidated by the Authority if such programs are found to be unsatisfactory. Pursuant to this section, on April 14, 1971, the Authority adopted the Criteria For Implementing Local Programs Certification Application, which is referred to in your letter.

As a general response to your questions 1(a)–(d) and 2(a)–(c), a local program must meet the requirements of the standards and procedures adopted by the Authority including the above-identified criteria and be approved by the Authority in order to be a valid program under Section 34.

In response to your specific questions, notably question 1(a), Section I(1) of the above-identified Criteria provides for an independent board consisting of between five and eleven members which is empowered by the Charleston County Council to make policy, decide issues, and control the program. This provision necessarily excludes the Charleston County Council from itself being this board since it cannot be independent of itself. However, in response to your question 1(b), the Council can delegate authority to a board of its own selection to formulate the policy under which the program shall be operated and in face must do so under the provisions of this Section I(1).

With respect to question 1(c) and your request for the legal definition of a program, I am not aware of any special ‘legal’ definition of the word program other than its common and ordinary meaning as set forth in standard dictionaries. As such, under the provisions of Section 34, programs must necessarily include policy-making aspects in addition to operational aspects since policy affects what operations are to be performed and how they are to be carried out under the program.

With respect to question 1(d), in approving local programs, the Authority is authorized to determine the qualifications of the board in order to make certain that the requirements of Section I(1) of its Criteria, i.e., that the board be independent and include representation of the public-at-large, technically knowledgeable people, and possibly the government, are met.

Your remaining specific questions each relate to the Constitutional provision prohibiting persons from holding two offices of honor or profit at the same time. This provision can be found in Article 17, Section 1A of the South Carolina Constitution (1971

Cum. Supp.) (formerly Article 2, Section 2). For your information, I am forwarding herewith two prior opinions, Exhibits A and B, involving the application of this provision.

\*2 In response to your questions 2(a)–(c), this Constitutional provision can possibly preclude citizens of the State from serving without pay on more than one board in which an office is involved. Governmental employees may serve on boards with or without pay depending upon whether the employee's position and the membership on the board involve the holding of an office. Similarly, a citizen is not excluded from membership on a board merely because he is employed by an organization controlled by the board. However, both positions cannot involve offices and all other requirement of law must be met.

Finally, in response to your major question, the Air Pollution Control Board appointed by the Charleston County Council must meet the requirements of the Pollution Control Authority of South Carolina, e.g., the Criteria For Implementing Local Program Certification Application, in order to obtain certification therefrom. This office has not received information relative to the compliance of the Charleston Board's program with the Authority's Criteria and does not make the decision thereon. Accordingly, it is suggested that inquiries relative to the compliance and certification of the Charleston Board be directed to the Executive Director of the Pollution Control Authority.

If you have any questions about any matter considered in this opinion or if I can be of any further assistance to you, please let me know.

Very truly yours,

Edwin B. Brading  
Assistant Attorney General

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