

1972 WL 26153 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 15, 1972

*1 Mr. Robert W. Turner
Chairman
S. C. Pollution Control Authority
511 Durant Street
North Charleston, South Carolina

Dear Mr. Turner:

Thank you for your letter of June 14, 1972, inquiring if one who is a member of the Charleston County Board of Health may at the same time hold a position as a member of the Charleston County Air Pollution Control Board.

There is no question but that membership upon the County Board of Health Constitutes an office. [Darling v. Brunson](#), 94 S.C. 207 .

The Charleston County Air Pollution Control Board is created under the provisions of Section 63-195.34, which authorizes ‘the governing body of any county to establish local air pollution control programs—. County pollution control authorities, when constituted under this section, are hereby authorized to exercise in the geographic area involved all of the powers specified in this chapter, including the authority to adopt rules, regulations and procedures for the control of air pollution.’

The constitutional provision against dual officeholding applies to State as well as municipal officers. [Darling v. Brunson](#), *supra*.

The question for determination is whether the position of member of the Charleston County Air Pollution Control Board is an office as distinguished from an employment. In the opinion of this Office, this position is one which is created by law, to wit, the statute cited above. It undoubtedly vests in the holder of such position the exercise of a portion of the sovereign power of the State. To this extent, it is rather clearly an office and, in the opinion of this Office, it is so considered. Some of the indicia of an office are lacking, such as specified lengths of terms of office, etc., but the prime requisite of exercise of the sovereignty of the State is present and, in the view of this Office, is considered conclusive.

I therefore advise that, in the opinion of this Office, the same individual cannot at the same time occupy the position of member of a County Board of Health and Charleston County Air Pollution Control Board.

Very truly yours,

Daniel R. McLeod
Attorney General

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