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# The State of South Carolina



## Office of the Attorney General

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February 23, 1994

Ms. Lucille B. Scott  
Route 4, Box 296  
Kingstree, South Carolina 29556

Dear Ms. Scott:

By your letter of January 28, 1994, you have requested the opinion of this Office as to whether you may serve simultaneously as a trustee of the Williamsburg County School Board and as a member of the Board of Social Services of Williamsburg County, an advisory board, without violating the dual office holding prohibitions of the State Constitution.

Article XVII, Section 1A of the state Constitution provides that "no person may hold two offices of honor or profit at the same time ...," with exceptions specified for 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). 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).

This Office has previously advised that one who serves on the Williamsburg County School Board would be considered an office holder for dual office holding purposes. Enclosed is a copy of an opinion dated October 19, 1990, so concluding.

This Office has similarly advised on numerous occasions that one who serves on a county board of social services would be considered an office holder. See, as examples, Op. Atty. Gen. dated February 11, 1986; June 12, 1986; September 7, 1989; and many others. Subsequent to these opinions, however, the enabling legislation as to county boards of social services has been amended. Thus, it is necessary to re-examine the conclusion of these opinions.

Revised Scott

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County boards of social services are to be established pursuant to S.C. Code Ann. § 43-3-10 et seq., which statutes were most recently amended by Act No. 181 of 1993 (the restructuring act). Section 43-3-10 provides for appointment of members of the county boards by the Governor upon the recommendation of a majority of the county legislative delegation, including the Senator, for terms of three years and until their successors have been appointed and qualified. Compensation is specified in § 43-3-20. No oath is required by these statutes. By § 43-3-10, the county board is to serve "in an advisory capacity to the director of the county department of social services and to the director." Prior to amendment in 1993, § 43-3-60 provided for the powers and duties of the county boards of social services; by the 1993 amendments, these powers and duties have devolved on the county directors. No other statute in Chapter 3 of Title 43 enumerates powers and duties of the county boards; as the boards serve in an advisory capacity, it appears that, since the 1993 amendments, the county boards are not exercising a portion of the sovereign power of the state.

While members of county boards meet a number of the criteria usually found in an office, the exercise of sovereign power appears to be lacking. Thus, since the 1993 amendments, it appears that members of county boards of social services would no longer be considered office holders for dual office holding purposes. In that regard, prior opinions of this Office concluding otherwise must be modified to reflect the amendment to the relevant law.

Based on the foregoing, it is the opinion of this Office that an individual may serve simultaneously on the Williamsburg County School Board and on the Board of Social Services of Williamsburg County without violating the dual office holding prohibitions of the state Constitution.


With kindest regards, I am

Sincerely,

*Patricia D. Petway*  
Patricia D. Petway  
Assistant Attorney General

PDP/an

REVIEWED AND APPROVED BY:

  
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Robert D. Cook  
Executive Assistant for Opinions