

7173 Library



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

June 21, 2001

Heather Lea Simmons, County Administrator
Allendale County
P.O. Box 190
Allendale, South Carolina 29810

Dear Ms. Simmons,

By your letter of June 12, 2001, you have requested an opinion of this Office concerning dual office holding. You inform us that a current member of the Allendale County School District Board is being offered in consideration for an appointment to the position of magistrate for Allendale County. You ask whether simultaneous service in these position would violate State law.

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 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 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 concluded on many occasions that a magistrate holds an office for dual office holding purposes. See Ops. Atty. Gen. Oct. 8, 1998, Jan. 29, 1998, and Aug. 13, 1986 as representative of these numerous opinions. Furthermore, this Office has also concluded on many occasions that membership on a school district board of trustees would constitute an office for dual office holding purposes. See Ops. Atty. Gen. Oct. 5, 1993, Nov. 1, 1991 and Aug. 8, 1990. Based on these prior opinions, it is my opinion that membership on the Allendale County School District Board would constitute an office for dual office holding purposes. Thus, service in both positions simultaneously would contravene the Constitution's prohibition against dual office holding.

Incidentally, when a dual office holding situation occurs, the law operates to automatically "cure" the problem. If an individual holds one office on the date he assumes a second office,

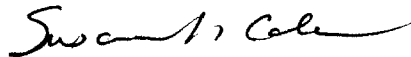
Ms. Simmons
June 21, 2001
Page 2

assuming both offices fall within the purview of §Article XVII, 1A of the Constitution (or one of the other applicable constitutional prohibitions against dual office holding), he is deemed by law to have vacated the first office. 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. Actions taken by a de facto officer in relation to the public or third parties will be considered as valid and effectual as those of a de jure officer unless or until a court would declare such acts void or remove the de facto officer from office. See Ops. Atty. Gen Apr. 8, 1996 and July 13, 1995.

This letter is an informal opinion only. It has been written by a designated Assistant Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I remain

Very truly yours,



Susannah Cole
Assistant Attorney General