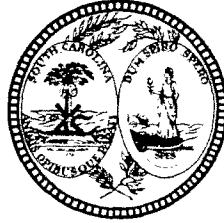


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The State of South Carolina  
**OFFICE OF THE ATTORNEY GENERAL**

CHARLES MOLONY CONDON  
ATTORNEY GENERAL

January 7, 1997

Daniel W. Williams, Esquire  
Post Office Box 616  
Barnwell, South Carolina 29812

Re: Informal Opinion

Dear Mr. Williams:

By your recent letter, you have asked the opinion of this Office on whether it would contravene the dual office holding provisions of the Constitution of the State of South Carolina for an individual to simultaneously serve on the Barnwell County Hospital Board and the Barnwell County Transportation Committee.

Article XVII, Section 1A of the South Carolina Constitution provides that "[n]o person may hold two offices of honor or profit at the same time ...," with exceptions specified for officers in the militia, members of a lawfully and regularly organized fire department, constables, or a notary public. For this provision to be contravened, a person concurrently must hold two public offices which have duties involving the 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).

The first position to be considered is that of a member of the Barnwell County Hospital and Nursing Home Board. The Hospital Board was initially established by Act No. 298, 1953 Acts and Joint Resolutions, and the Nursing Home Board by Act No. 1155, 1964 Acts and Joint Resolutions. The two boards and their respective functions were consolidated as the Barnwell County Hospital and Nursing Home Board by Act No. 1455, 1968 Acts and Joint Resolutions. Board members have a tenure of four years. Section

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1, Act No. 1455. There are no provisions for an oath of office, salary or qualifications.<sup>1</sup> The duties do appear to be an exercise of a portion of the sovereign power of the State. Section 1 of Act No. 298 establishes the Hospital Board "to provide hospital facilities for inhabitants of the county." By Act No. 298, duties of the board include the acquisition of real estate; accepting grant-in-aids, donations, and so forth; construction of the hospital; adoption of rules and regulations; personnel matters; and others. By Act No. 1155, board members are empowered to construct and equip a nursing home; employ personnel; accept gifts and grants; borrow money; and others. By Act No. 1455, powers and duties were to continue from the previous acts. It would appear that the Barnwell County Hospital and Nursing Home Board is acting for the inhabitants of the county. All factors considered, the members of the Board are most probably officers for dual office holding purpose. Op.Atty.Gen. dated September 6, 1984.

The other position to be considered is that of Barnwell County Transportation Committee member. This Office has opined on several occasions concerning members of county transportation committees in the context of dual office holding. In an opinion dated May 16, 1995, it was concluded that "while it is not entirely free from doubt, it appears that one who would serve on a County Transportation Committee would hold an office for dual office holding purposes."

In conclusion, based on the foregoing, it is the opinion of this Office that one who would serve simultaneously on the Barnwell County Hospital and Nursing Home Board and the Barnwell County Transportation Committee would most probably violate the dual office holding provisions of the State Constitution.

With kindest regards, I remain

Very truly yours,



Paul M. Koch  
Assistant Attorney General

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<sup>1</sup> In your opinion request, you have informed this Office that members of the Hospital Board receive six hundred dollars (\$600.00) in pay.