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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

May 7, 1998

Paul N. Siegel, Esquire
Colleton County Attorney
P. O. Box 1143
Walterboro, South Carolina 29488-0012

Dear Mr. Siegel:

Attorney General Condon has forwarded your opinion request to me for reply. You have asked whether a member of the Colleton County School Board may simultaneously serve as the Colleton County Administrator 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 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 never specifically opined as to whether membership on the Colleton County School Board of Trustees constitutes an office for dual office holding purposes. However, we have on numerous occasions concluded that membership on a school district board of trustees would constitute an office for dual office holding purposes. See, as examples of these numerous opinions, Ops. Atty. Gen. dated October 5, 1993, November 1, 1991 and August 8, 1990. Based on these prior opinions, it is my opinion that membership on the Colleton County School Board of Trustees would constitute an office for dual office holding purposes.

I have been informed that Colleton County operates under the council-administrator form of government. This Office has previously opined that one who serves as a county

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administrator for a county in which the county-administrator form of government has been properly adopted, would hold an office for dual office holding purposes. Ops. Atty. Gen. dated August 8, 1990 and May 30, 1979. In accordance with these prior opinions, it is my opinion that the Colleton County Administrator would hold an office for dual office holding purposes.

To summarize the foregoing, if a member of the Colleton County School Board of Trustees were to serve simultaneously as the Colleton County Administrator, such service would violate the dual office holding prohibitions of the State Constitution.

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, assuming both offices fall within the purview of Article XVII, Section 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. While the actions taken by a de facto officer are generally held to be valid with regard to third parties, there is no question that such officer is acting under color of law rather than with full de jure status which he would possess if there had been no dual office holding. Furthermore, there exists general authority that the protections afforded a de facto officer will not be deemed to continue indefinitely, particularly when the public is chargeable with notice that the officer's status has been reduced to one of de facto rather than de jure. 63A Am.Jur.2d Public Officers and Employees.

With kindest regards, I remain

Very truly yours,



Paul M. Koch
Assistant Attorney General

REVIEWED AND APPROVED BY:



Zeb C. Williams, III
Deputy Attorney General

cc: The Honorable McKinley Washington