



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

July 26, 1999

W. Lee Roper, Esquire
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Attorneys and Counselors at Law
414 Main Street
Greenwood, South Carolina 29646

RE: Informal Opinion

Dear Mr. Roper:

Your opinion request has been forwarded to me for reply. You have asked whether the dual office holding prohibitions of the South Carolina Constitution would be violated if an individual were to simultaneously serve as a member of the Greenwood County Council and as a member of the State Board of Nursing.

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 advised on numerous occasions that a member of a county council would hold an office for dual office holding purposes. Ops. Atty. Gen. dated June 27, 1997, December 7, 1994, August 20, 1985 and June 26, 1984. Thus, it must be determined whether a member of the State Board of Nursing would also hold an office.

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The State Board of Nursing is established pursuant to S.C. Code Ann. § 40-33-210 et seq. The Board is to consist of nine members, appointed by the Governor. The terms of the members are four years and until successors are appointed and qualified. Board members may receive the usual per diem, mileage, and subsistence as provided by law for members of state boards. S.C. Code Ann. § 40-33-230. The powers of the Board are set forth in S.C. Code Ann. § 40-33-220. These powers include examining candidates for licensure, licensure generally, investigating and disciplining licensees (including subpoena powers), holding hearings, developing minimum standards for nursing education programs, and more. Thus, considering all of these factors, a member of the State Board of Nursing would be an officer for dual office holding purposes.¹

Based on the foregoing, if an individual were to simultaneously serve as a member of the Greenwood County Council and as a member of the State Board of Nursing, the dual office holding prohibitions of the South Carolina Constitution would be violated.

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 questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With best personal regards, I am

Sincerely yours,



Paul M. Koch
Assistant Attorney General

¹ This Office has reached a similar conclusion when evaluating other professional regulatory boards. See Ops. Att'y. Gen. dated December 7, 1994 (South Carolina Real Estate Appraisers Board) and June 25, 1986 (State Board of Cosmetology).