

The State of South Carolina



Office of the Attorney General

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
TELEPHONE: 803-734-3970
FACSIMILE: 803-253-6283

July 28, 1993

The Honorable Charles H. Stone
Member, House of Representatives
Route 3, Box 109
Edgefield, South Carolina 29824

Dear Representative Stone:

Referencing the amendments to S.C. Code Ann. § 12-27-400 by the 1993-94 Appropriations Act in Part II, § 23, you have inquired as to who may be appointed to the newly-created County Transportation Committee to be established for Edgefield County. Your particular concern was whether mayors or members of municipal or county councils could also serve on the County Transportation Committee without running afoul of 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 advised on numerous occasions that mayors, members of municipal (city or town) councils, and members of county councils would be considered office holders for dual office holding purposes. See, as examples, Ops. Atty. Gen. dated September 21, 1989; March 31, 1987; and November 6, 1987 as to mayors; September 7, 1989; January 8, 1991; and November 20, 1989 as to city or town council members; and May 15, 1989; December 11, 1990; and March 19, 1990 as to county council members, among many other opinions. Thus, it must be determined whether a member of a County

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Transportation Committee would also be considered a public officer within the meaning of the state Constitution.

An amendment to § 12-27-400, commonly called the "C-fund" statute, was adopted in 1993 in response to a Supreme Court decision that the county legislative delegation's role in determining how "C-funds" were to be spent was violative of the constitutional principle of separation of powers. As a result, county delegations are to appoint County Transportation Committees pursuant to § 12-27-400. Subsection (C) provides that "C-funds" expended

must be approved by and used in furtherance of a countywide transportation plan adopted by a county transportation committee. The transportation committee must be appointed by the county legislative delegation and must be made up of fair representation from municipalities and unincorporated areas of the county.

Applying the factors noted in the second paragraph of this letter to § 12-27-400, we observe that a general law creates the county transportation committees and requires the county legislative delegation to appoint the members thereof. A qualification for membership is specified, in that members must represent municipal and county interests (in a fair way). No oath is required; no compensation is specified. No specific tenure is provided by § 12-27-400, but you advised by telephone that your delegation is considering appointments for one- or two-year terms. Duties are specified within § 12-27-400; the committee may receive funds directly if it provides its own engineering, contracting, and project supervision; it must adopt a county-wide transportation plan; it must approve and use funds in furtherance of the plan; it may be part of a regional committee and participate in a regional plan; it may adopt specifications for local road projects; and so forth. These are indicative of an exercise of a portion of the sovereign power of the state.

Considering the foregoing, 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. Thus, if a mayor or city or county council member were to serve simultaneously on a County Transportation Committee, that individual would most probably violate the dual office prohibitions of the state Constitution.

If the Delegation wished to receive suggestions or recommendations from the various municipal councils and Edgefield County Council as to appointees who might fairly represent their various interests, certainly the Delegation could solicit input from

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those entities. The Delegation would need to retain the ultimate decision-making authority, of course.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/an

REVIEWED AND APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions