

5224 Liberty

The State of South Carolina



Office of the Attorney General

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September 7, 1993

Mr. James N. Sweeney
1916 Market Street
Cheraw, South Carolina 29520

Dear Mr. Sweeney:

You have asked whether you may serve simultaneously on the Chesterfield County Board of Education and on the board of directors of the Chesterfield County Rural Water Co., Inc. 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 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).

The Office has advised on numerous occasions that a member of a county board of education or a school district trustee would be considered an officer for dual office holding purposes. As examples of the numerous opinions, enclosed are copies of opinions dated July 16, 1991 and November 1, 1991.

This Office has apparently not previously examined membership on the governing body of a rural water company such as Chesterfield County Rural Water Co., Inc. We have been able to obtain, from the state Department of Archives and History, a copy of the charter issued May 21, 1968 by the Secretary of State. An examination of the charter shows that this entity is a nonprofit organization financed in whole or in part by funds from the Farmers Home Administration. The rights, powers, and duties which may be

Respectfully,

Mr. Sweeney
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exercised by such an entity are described in the charter as "by virtue of Act No. 1030 of the 1964 Acts and Joint Resolutions" The referenced act is presently codified as chapter 35 of Title 33, related to federally financed nonprofit corporations. While the entity is created pursuant to general enabling legislation, no specific legislation created this specific entity. No legislation created the position of director or member of the governing body; specifies qualifications to be met by the holder of the position; requires an oath of the holder; or provides for his compensation. These matters are all provided for in the charter or bylaws. A review of the powers and duties to be exercised by directors or members of the governing body (as found in the charter and in chapter 35 of Title 33) does not reveal any powers or duties which are indicative of an exercise of sovereign power (i.e., eminent domain, levying and collecting taxes, pledging the credit of the State or a political subdivision, among many others).

Considering all of the foregoing factors, we are of the opinion that one who would serve as a director or a member of the governing body of the Chesterfield County Rural Water Co., Inc. would most probably not be considered an office holder for dual office holding purposes. Thus, you could serve in that capacity and on the Chesterfield County Board of Education without violating the dual office holding prohibitions of the state Constitution.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/an
Enclosures

REVIEWED AND APPROVED BY:

Robert D. Cook / RDP

Robert D. Cook
Executive Assistant for Opinions