

## The State of South Carolina



## Office of the Attorney General

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April 5, 1994

Mr. Marvin B. Banton  
Post Office Box 160  
Duncan, South Carolina 29334

Dear Mr. Banton:

By your letter of March 28, 1994, you have asked whether you may serve concurrently on Clemson University's Board of Visitors, on the governing board of Spartanburg Technical College, and on the Work Force Initiative 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 previously determined that one who would serve on Clemson University's Board of Visitors would not hold an office for dual office holding purposes. Enclosed is a copy of an opinion dated June 24, 1983, so concluding.

The Spartanburg County Commission for Technical Training (as it currently exists) was created pursuant to Act No. 906 of 1962,<sup>1</sup> as amended by Act No. 477 of 1969 and

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<sup>1</sup> Act No. 906 of 1962 repealed Act No. 387 of 1961, which apparently created the first Spartanburg County Committee for Technical Training.

Mr. Banton  
Page 2  
April 5, 1994

Act No. 197 of 1973, which latter act changed the entity's name to the Spartanburg County Commission for Technical Education. The governing board is to consist of thirteen members who are appointed by the Governor upon recommendation of a majority of the Spartanburg County Legislative Delegation. Members are to be appointed so that each of the school districts in the county is represented as specified in § 1 of Act No. 197 of 1973 (i.e., a requirement of residency is imposed). Members serve for terms of four years. Powers and duties exercised by the governing board are specified in § 2 of Act No. 906 of 1962, as amended by § 2 of Act No. 477 of 1969; these duties include such activities as developing and implementing vocational and technical training programs, purchasing equipment, hiring personnel, making necessary rules and regulations, and more. In addition, the powers and duties exercised by technical education commissions generally, in S.C. Code Ann. § 59-53-52 (revised 1990) and other laws, would be applicable to the governing board of Spartanburg Technical College. These duties appear to involve an exercise of a portion of the sovereign power of the State. Considering these factors, one who serves on this board would likely be considered an officer for dual office holding purposes.<sup>2</sup>

The Governor's Work Force Initiative was created by the Governor by Executive Order # 90-31. We can locate no statutory or constitutional authority which specifically mandated that the entity be created. In the absence of such authority, this Office has consistently concluded that membership on an entity created pursuant to executive order by a governor most probably would not constitute an office. As examples, see Ops. Atty. Gen. dated May 6, 1992 (as to the Council on Vocational and Technical Education); August 1, 1985 (as to the Youth Employment Coordinating Council); March 27, 1985 (as to the Governor's School for the Arts board); and July 9, 1982 (as to the Governor's Resource Panel for the Elderly), among others.

Considering all of the foregoing, it is the opinion of this Office that you may most probably serve concurrently on Clemson University's Board of Visitors, on the governing board of Spartanburg Technical College, and on the Work Force Initiative without violating the dual office holding prohibitions of the state Constitution.

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<sup>2</sup> Reference to holding office may be found in § 1 of Act No. 906 of 1962; § 1 of Act No. 477 of 1969; and § 1 of Act No. 196 of 1973. Arguably, the General Assembly has already deemed membership on this board to be an office.

Mr. Banton  
Page 3  
April 5, 1994

With kindest regards, I am


Sincerely,

*Patricia D. Petway*

Patricia D. Petway  
Assistant Attorney General

PDP/an  
Enclosure

REVIEWED AND APPROVED BY:

  
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