

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

February 1, 1994

A. LaFon LeGette, Jr., Esquire
Post Office Box 305
Latta, South Carolina 29565

Dear Mr. LeGette:

By your letter of January 27, 1994, you have requested the opinion of this Office as to the propriety and legality of your serving concurrently as the Public Defender for Dillon County on a part-time basis and on the Dillon County Board of Education after the expiration of your term on the Board of Trustees of the local school district in the Latta area. For purposes of this opinion, it is assumed that you are concerned about the constitutional prohibition against dual office holding.

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 previously that one who would serve on a district or county board of education would hold an office for dual office holding purposes. As examples of numerous opinions, enclosed are copies of two opinions dated July 8, 1983 as to county school boards.

This Office has also advised previously that one who serves as a public defender, who is employed by a public defender corporation, does not hold an office for dual office holding purposes. Enclosed is a copy of an opinion dated July 9, 1986, so concluding.

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Considering the foregoing, it is the opinion of this Office that you could serve as public defender and on the local or county school board simultaneously without contravening the dual office prohibitions of the state Constitution.

You may wish to consider seeking an ethics advisory opinion from the South Carolina Bar's Ethics Advisory Committee, to have considered whether the Rules of Professional Conduct, Rule 407, S.C.A.C.R., would have any effect on holding both positions. Too, since the public defender is considered a county employee, you may wish to inquire about any county policies which may affect your serving in both capacities.

With kindest regards, I am

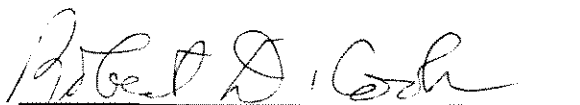
Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/an
Enclosures

REVIEWED AND APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions