

5339 February

# 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

January 31, 1994

The Honorable Barbara Stock Nielsen, Ed.D.  
State Superintendent of Education  
1429 Senate Street  
Columbia, South Carolina 29201

Dear Dr. Nielsen:

You requested the opinion of this Office as to whether a member of the State Board of Education can concurrently serve as a member of the Bamberg County Economic Development Commission without violating the dual office 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 advised, by an opinion dated November 27, 1985 (copy enclosed), that an individual who serves on the State Board of Education would hold an office for dual office holding purposes. Thus, it must be determined whether membership on the Bamberg County Economic Development Commission would constitute an office.

*Donna L. Little*

The Honorable Barbara Stock Nielsen, Ed.D.

Page 2

January 31, 1994

We have reviewed Ordinance No. 11-85-1 of Bamberg County Council, which ordinance provided for the establishment of the Bamberg County Economic Development Commission, and also a document entitled "Proposed By-Laws of the Bamberg County Economic Development Commission 1993."<sup>1</sup> Membership on this commission is to consist of twelve<sup>2</sup> members appointed at large to represent the banking, retail business, farming, industrial, and utility segments of the county. Terms of the members so appointed are for four years.<sup>3</sup> No oath is required to be taken prior to assumption of duties, and no provision is made for compensation. Section 4 of the ordinance, as to "Scope of Powers," states: "The Commission shall be sole responsibility, through adopted policy committed to writing, of directing all economic development activities within the county." [sic.] This is an extremely broad grant of power and does not appear to be advisory in nature or to require approval of county council prior to the commission's taking various actions. Considering all of the foregoing, it is our opinion that one who serves on the Bamberg County Economic Development Commission would be considered an office holder for dual office holding purposes.

In conclusion, we are of the opinion that an individual who would serve concurrently on the State Board of Education and on the Bamberg County Economic Development Commission would most probably run afoul of the dual office prohibitions of the state Constitution.

---

<sup>1</sup> While the document appears to be "Proposed By-Laws ...", we understand that the bylaws have actually been adopted and are presently in effect. We observe that the bylaws are not consistent with the ordinance in all respects; in case of inconsistencies, we have looked to the ordinance for the more authoritative position. The appropriate entity may wish to consider bringing the bylaws into conformity with the ordinance.

<sup>2</sup> Bylaws call for appointment of seven members. See footnote 1, supra.

<sup>3</sup> See also Bylaws, Art. V, § 2; footnote 1, supra.

The Honorable Barbara Stock Nielsen, Ed.D.

Page 3

January 31, 1994

With kindest regards, I am

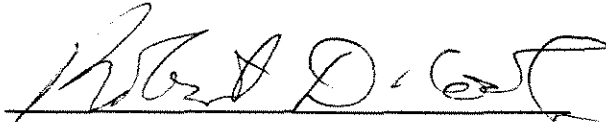
Sincerely,

*Patricia D. Petway*

Patricia D. Petway  
Assistant Attorney General

PDP/an  
Enclosure

REVIEWED AND APPROVED BY:



Robert D. Cook  
Executive Assistant for Opinions