

# The State of South Carolina



## Office of the Attorney General

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March 3, 1994

The Honorable Larry Elliott  
Member, House of Representatives  
333-B Blatt Building  
Columbia, South Carolina 29211

Dear Representative Elliott:

By your letter of February 16, 1994, you have sought the opinion of this Office as to whether a County Planning Commission may serve as that county's County Transportation Commission without contravening 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 advised by an opinion dated July 28, 1993 that one who would serve on a county transportation committee would hold an office for dual office holding purposes. A copy of the opinion is enclosed.

Similarly, this Office has advised on numerous occasions that a member of a county planning commission would hold an office for dual office holding purposes. Enclosed are copies of opinions dated January 10, 1990 and January 23, 1989, so concluding.

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Thus, we would advise that should members of a county planning commission be appointed as that county's county transportation committee, a dual office holding situation would most probably result.

With kindest regards, I am

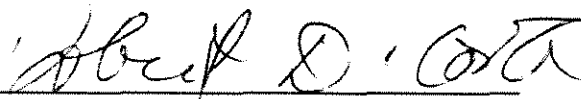
Sincerely,

*Patricia D. Petway*

Patricia D. Petway  
Assistant Attorney General

PDP/an  
Enclosures

REVIEWED AND APPROVED BY:



Robert D. Cook  
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