

The State of South Carolina



Office of the Attorney General

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January 10, 1995

TEC Dowling, Superintendent
School District of Newberry County
Post Office Box 718
Newberry, South Carolina 29108

Dear Mr. Dowling:

By your letter of December 9, 1994, you have asked whether an individual may serve concurrently on the Newberry County Board of Education and as an appointed member of the Newberry County Disabilities and Special Needs Board of Directors. You have sought and received an opinion from the State Ethics Commission, which entity also referred you to this Office to inquire as to dual office holding considerations.

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 on many occasions that one who serves on a county board of education would hold an office for dual office holding purposes. See, as examples, Ops. Att'y Gen. dated September 7, 1993 (Chesterfield County Board of Education), enclosed; February 20, 1985 (Horry County); August 21, 1985 (Beaufort County); and many more. There is no reason to reach a different conclusion as to a member of the Newberry County Board of Education.

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Similarly, this Office has advised previously that one who would serve on a county or multi-county mental retardation board (or board of disabilities and special needs as it is now known) would be considered an office holder for dual office holding purposes. See, as examples, opinions dated September 10, 1993, enclosed; April 10, 1989; and others. There is likewise no apparent reason to conclude otherwise as to the Newberry County Board of Disabilities and Special Needs.

Based on the foregoing, it is the opinion of this Office that one who would serve simultaneously on the Newberry County Board of Education and on the Newberry County Board of Disabilities and Special Needs would most probably contravene the dual office holding prohibitions of the state Constitution.

With kindest regards, I am

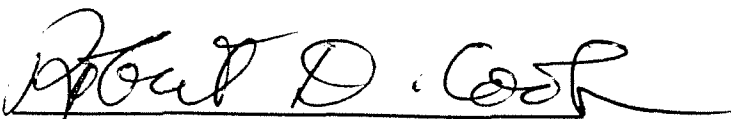
Sincerely,



Patricia D. Petway
Assistant Attorney General

PDP/an
Enclosures

REVIEWED AND APPROVED BY:



Robert D. Cook
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