



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

October 23, 1995

Ms. Carol N. Ward
6296 Rivers Avenue, Suite 310
North Charleston, South Carolina 29406

RE: Informal Opinion

Dear Ms. Ward:

By your letter of October 16, 1995, to Attorney General Condon, you have advised that you have been appointed recently to the State Board of Education. You have also been on the Charleston County Library Board for three years. You have sought an opinion as to whether you may serve concurrently on the Charleston County Library Board and on the State Board of Education without violating the dual office holding prohibitions of the State Constitution.

Article XVII, Section 1A of the South Carolina 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 opined previously, on several occasions, that a member of the State Board of Education would be considered an office holder for dual office holding purposes. Enclosed is a copy of an opinion dated November 27, 1985, so concluding.

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This Office has apparently never considered whether membership on the Charleston County Library Board would constitute an office for dual office holding purposes. We have determined that membership on several library boards would constitute an office, however, by opinions dated September 25, 1989 (Barnwell County Library Board of Trustees); February 11, 1981 (Allendale County Library Board); July 24, 1980 (Greenville County Library Board of Trustees); and March 11, 1976 (Florence County Public Library Trustee). Copies of these opinions are enclosed.

County councils were required by S.C. Code Ann. §4-9-35 et seq. (1976, revised 1986), to establish a county public library system within the county by ordinance. The county council was given the authority to provide by ordinance for the composition, function, duties, responsibilities, and operation of the county library system. Provisions are found in §4-9-35 for appointment of a board of trustees for the management and control of the public library system. Thus, it is quite likely that an ordinance adopted by Charleston County Council pursuant to these Code sections exists with respect to the Charleston County Library and its board.

This Office has advised previously that membership on a county library board of trustees established pursuant to §4-9-35 et seq. would constitute an office. Op. Att'y Gen. dated February 11, 1981, supra. If the Charleston County Library Board was established or revised according to these Code sections, membership on that Board would most probably constitute an office; to determine that issue with certainty, it would be necessary to examine the ordinance(s) of Charleston County Council with respect to the Board. It may well be that the enclosed opinions are close enough factually to the Charleston County Library Board to say that membership on that Board would constitute an office for dual office holding purposes; if that is not the case, you may wish to forward a copy of the relevant ordinance(s) to me for further examination.

If the Charleston County Library Board is similar to the other library boards previously examined by this Office, I would conclude that membership thereon would most probably be an office. Thus, membership on that Board and on the State Board of Education concurrently could contravene the dual office holding prohibitions of the State Constitution, if the previously issued opinions are applicable. I will be happy to look at any county ordinances which you may forward to me, to consider the matter further, however.

This letter is an informal opinion only. It has been written by a designated Senior Assistant Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

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With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Senior Assistant Attorney General

Enclosures