

# 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

May 21, 1993

Mr. Gene Beckman  
Boards and Commissions  
Office of the Governor  
Post Office Box 11369  
Columbia, South Carolina 29211

Dear Mr. Beckman:

You have asked to be advised whether service on the Anderson County Board of Education would constitute the holding of an office in the context of dual office holding under the South Carolina Constitution's prohibition of such 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).

While the Anderson County Board of Education has been in existence for a long time, we find that Act No. 510 of 1982, as amended, provided for the powers, duties, and election of the Anderson County Board of Education; abolished the office of county superintendent of education and devolved the duties of that Office on the Board of Education; provided for appeals from decisions of the Board; and more. Other relevant acts to be considered include Act No. 511 of 1982; Act No. 270 of 1989; Act No. 710 of 1990; and Act No. 269 of 1989, among others.

*Robert L. ...*



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Reviewing these acts, we find that membership on the Anderson County Board of Education (a popularly elected position) was created by acts of the General Assembly. The above-cited acts require that members be qualified electors and reside in a particular school district. Duties to be exercised are found in § 4 of Act No. 510 of 1982, as amended; these duties include general supervision of all phases of the public school program in Anderson County, except for whatever duties, etc., may be vested in the local school district boards; employment of personnel; establishing qualifications and rule-making respecting personnel of the board (such rules to have the force of law); exercising the powers formerly exercised by the county superintendent of education; advising the county auditor as to millage necessary to retire school bonds; reviewing and approving the budgets of the school districts and review and approval of requests for increases or decreases in taxation or millage by the school districts as provided in the acts. The actual management and control of the school districts lies with the respective district boards of trustees, however. Anderson County School District 1 v. Anderson County Board of Education, 296 S.C. 260, 371 S.E.2d 807 (1988). A review of the powers and duties indicates that those powers listed in the above-cited acts would probably involve an exercise of a small portion of the sovereign power of the State.

A term of four years is provided for in the legislative enactments after a staggered scheme of elections is phased in. No oath is required by the above-cited acts, but an oath is required of all public officers by Art. VI, § 5. No compensation is mentioned for Board members within these acts, though reimbursement may be made for travel expenses.

Considering all of the foregoing, it is the opinion of this Office that membership on the Anderson County Board of Education may well be an office for dual office holding purposes. In so concluding, we observe that the issue has not been decided by a court and that only a court would be able to ultimately and with finality decide the issue.<sup>1</sup>

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<sup>1</sup>This Office has consistently advised that one whose legal title to an office is challenged on the basis of dual office holding is nevertheless entitled to continue to hold office as a de facto officer, whose acts are considered valid and effectual as to the public and third parties, unless or until a court declares otherwise or a court removes the officer. Ops. Atty. Gen. dated October 1, 1990; January 17, 1985; February 20, 1985; among many others. We have also advised under such circumstances that a determination of fact as to dual office holding be made with the involved individual being given an opportunity to express his views in the matter, Op. Atty. Gen. dated October 21, 1985; and that such a determination that a particular position constitutes an office is ultimately within the province of the courts rather than this Office. Op. Atty. Gen. dated November 18, 1986.

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With kindest regards, I am

Sincerely,

*Patricia D. Petway*  
Patricia D. Petway  
Assistant Attorney General

PDP/an

REVIEWED AND APPROVED BY:

*Robert D. Cook*

Robert D. Cook  
Executive Assistant for Opinions