

Library 5135

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 4, 1993

Clifford L. Gray, Executive Director
Greenville Memorial Auditorium
Post Office Box 10348
Greenville, South Carolina 29603

Dear Mr. Gray:

You have asked whether the dual office holding prohibitions of the South Carolina Constitution would be violated if an individual were to serve simultaneously on the Highway Commission and on the Board of Commissioners of the Greenville Memorial Auditorium District of Greenville County.

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, 58S.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 previous occasions that one who would serve as a Highway Commissioner would be considered an office holder for dual office holding purposes. See Op. Atty. Gen. dated February 21, 1990 (copy enclosed) and other opinions cited therein.

This Office has apparently never considered whether service on the board of commissioners of the Greenville Memorial Auditorium District would constitute an office. The District was originally created as the Greater Greenville Sewer District, with the name being changed to the Greenville Memorial Auditorium

Clifford L. Gray, Executive Director
Page Two
May 4, 1993

District by Act No. 1010 of 1948. Constitutional issues surrounding the composition of the governing body of the District were examined in Ashmore v. Greater Greenville Sewer District, 211 S.C. 77, 44 S.E.2d 88 (1947). The court in Ashmore concluded that a legislator could not serve on the District's board of trustees and in the legislature simultaneously, as Art. III, §24 of the state constitution would be violated; that section forbids the holding of "any office or position of profit or trust" while serving in the General Assembly. The court also observed that old Art. II, §2 of the state Constitution (now Art. XVII, §1A) would prevent the Mayor of the City of Greenville and the Chairman of the Board of County Commissioners of Greenville County from holding another office of honor or profit at the same time. Clearly the Ashmore court concluded that service on the governing body of the Greenville Memorial Auditorium District would constitute office holding. We are not aware of subsequent legislation which would compel a different conclusion.

Thus, based on the foregoing, we are of the opinion that simultaneous service as a Highway Commissioner and on the governing body of the Greenville Memorial Auditorium District would most probably constitute dual office holding, in violation of the dual office holding prohibitions of the state Constitution.

With kindest regards, I am


Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP:kws
Enclosure

REVIEWED AND APPROVED BY:


Robert D. Cook
Executive Assistant for Opinions