

The State of South Carolina



Office of the Attorney General

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October 14, 1994

The Honorable J. Roland Smith
Member, House of Representatives
Drawer D
Langley, South Carolina 29834

Dear Representative Smith:

By your letter of October 4, 1994, you have inquired as to whether an individual may serve concurrently on the Aiken County Board of Education (if elected in the general election next month) and on the Aiken County Higher Education Commission without running afoul of 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 has concluded previously that service on the Aiken County School Board (Board of Education) would constitute an office for dual office holding purposes. Enclosed is a copy of Op. Att'y Gen. dated July 19, 1982, so concluding. Thus, it must be decided whether membership on the Aiken County Higher Education Commission would be considered an office.

The Aiken County Commission for Higher Education was created by Act No. 103, 1961 Acts and Joint Resolutions, as amended by the Act No. 269 of 1977 and Act No.

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697 of 1978. The Commission is to be comprised of nine members appointed by the Governor on recommendation of a majority of the Aiken County Legislative Delegation, including the Senators. Commissioners are to serve for terms of four years and until their successors have been appointed and qualify. No oath is required by these acts (but would be required pursuant to Art. VI, § 5 of the state Constitution). There are no qualifications to be met for membership. There is no provision for compensation of members. Powers to be exercised by the Commission are found in Act No. 269 of 1977, codified as § 21-1099.4 of the 1962 Code of Laws:

To carry out its purpose and objective the Commission, with the approval of a majority of its members, may enter into contracts, making binding agreements, negotiate with educators and educational institutions and, generally, take such actions in its name as are necessary to secure for Aiken County and adjacent areas the educational facilities described in Section 21-1099.3.

The commission may solicit funds and accept donations from various sources which it may expend in carrying out its objective. The Commission shall also be authorized to sell, mortgage, liquidate or otherwise dispose of any real or personal property devised, donated, acquired or otherwise given to the Commission or to any institution over which the Commission has jurisdiction.

The purpose is specified in Act No. 103 of 1961 in section 3:

The Commission shall have as its purpose the encouragement of higher education in Aiken County and adjacent areas and, more specifically, the establishment in Aiken County of facilities to offer standard freshman and sophomore college courses, and such other courses as deemed desirable. The Commission shall establish standards for the admission of persons to such courses.

It would appear that these duties involve an exercise of a portion of the sovereign power of the State.

Considering all of the foregoing, it is the opinion of this Office that one who would serve on the Aiken County Higher Education Commission would hold an office for dual

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office holding purposes. The same result has been reached as to the Spartanburg County Commission for Higher Education (see Op. Att'y Gen. dated March 27, 1992, a copy of which is enclosed) and other county commissions on higher education.

Thus, we are of the opinion that should a member of the Aiken County Higher Education Commission be elected to the Aiken County Board of Education and serve in both capacities simultaneously, a dual office holding problem would result.

With kindest regards, I am

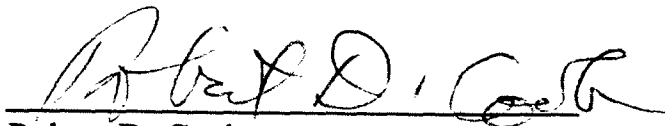
Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/an
Enclosure

REVIEWED AND APPROVED BY:



Robert D. Cook
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