



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

November 28, 1995

Ms. Carol N. Ward
25 Wraggborough Lane
Charleston, South Carolina 29403

RE: Informal Opinion

Dear Ms. Ward:

Thank you for your letter of November 20, 1995, following up on my informal opinion of October 23, 1995. You had enclosed with your letter a copy of the Charleston County Council's ordinance creating a county public library system for Charleston County, to have determined with more certainty whether your service on the Charleston County Library Board would be considered an office of honor or profit for purposes of dual office holding.

As stated in my previous letter, dual office holding is a constitutional issue. 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).

Analysis of the ordinance indicates that the Charleston County Library Board of Trustees was indeed created pursuant to S.C. Code Ann. §4-9-35 et seq. (1976, as revised). See section 1 of the ordinance. Section 2 of the ordinance created the Board of Trustees, to be comprised of eleven members to be appointed by the Charleston County

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Council for terms of four years and until their successors have been appointed and qualified. To the extent feasible, members are to be appointed from all geographic areas of the county. A qualification for membership or appointment, or more appropriately a limitation, is that one may not be appointed for more than two consecutive four-year terms.

Section 3 of the ordinance authorized the Board of Trustees to exercise exclusive and complete powers as to the policies of the Charleston County Library System; to employ a chief librarian; acquire and dispose of real property for the use of the Library System (through Charleston County Council as provided in the specified statutes); to acquire books and other library materials; to accept donations; to enter into contracts and agreements; and to receive and expend funds of various types, among other things. In section 4 of the ordinance, powers and duties are continued: to provide books and library materials to the residents of Charleston County by various means including a headquarters library, branch libraries, and bookmobiles; to adopt regulations; and to submit a budget to Charleston County Council to fund the operations of the Library System, among other things. An analysis of these powers and duties leads to the conclusion that a member of the Charleston County Library Board of Trustees would exercise a portion of the sovereign power of the State.

The only criteria which are often found in an office but are lacking in the ordinance of Charleston County Council are the requirement that an oath be taken (but see Article VI, Section 5 of the South Carolina Constitution) and the issue of compensation being paid. Absence of these criteria is not critical to the determination that a particular position would be an office, however.

Based on the foregoing, I am of the opinion that membership on the Charleston County Library Board of Trustees would constitute an office for dual office holding purposes. I can discern no reason to reach a conclusion different from the conclusions reached as to the library boards as listed in the informal opinion of October 23, 1995. To reiterate the conclusion of the earlier opinion, I am still of the opinion that service on the State Board of Education and on the Charleston County Library Board of Trustees simultaneously would constitute dual office holding, in contravention of the South Carolina Constitution.

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. I trust that

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the foregoing has satisfactorily responded to your inquiry and that you will advise if clarification or additional assistance should be necessary.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Senior Assistant Attorney General