



The State of South Carolina  
**OFFICE OF THE ATTORNEY GENERAL**

CHARLES MOLONY CONDON  
 ATTORNEY GENERAL

July 23, 1996

Mr. James W. Richardson, Chairman  
 Beaufort County Board of Elections  
 & Voter Registration  
 Post Office Drawer 1228  
 Beaufort, South Carolina 29901-1228

RE: Informal Opinion

Dear Mr. Richardson:

By your letter of July 2, 1996, to Attorney General Condon, you sought an opinion as to dual office holding with respect to members of the Beaufort County Board of Elections and Voter Registration and what, if any, boards and/or commissions members of the Elections and Voter Registration board members might be allowed to serve on.

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).

The Beaufort County Board of Elections and Registration was created pursuant to Act No. 583, 1994 Acts and Joint Resolutions. Members of the Board are appointed as provided in the Act for "terms of four years [and] until their successors are appointed and qualify" with provision made for staggered appointments. The Act provides Board members shall receive compensation as may be appropriated by the Beaufort County

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Council upon recommendation of the Beaufort County Legislative Delegation. Powers formerly exercised by the Beaufort County Election Commission and the Beaufort County Registration Board have been devolved on the Beaufort County Board of Elections and Registration, with the former boards being abolished. Those powers and duties are specified in Title 7, South Carolina Code of Laws.

This Office has concluded previously that members of voter registration boards would be considered office holders for dual office holding purposes. See Ops. Att'y Gen. dated May 6, 1992; June 19, 1987; March 13, 1985; and July 11, 1984, among others. Similarly, this Office has concluded that members of county election commissions would be considered office holders for dual office holding purposes. See Ops. Att'y Gen. dated May 6, 1992; August 6, 1991; June 19, 1991; and September 12, 1990, among others. Because the Beaufort County Board of Elections and Registration is in effect a board consolidating the powers, duties, responsibilities, and functions of a county election commission and a voter registration board, membership on each constituting an office, it is an inescapable conclusion that membership on a board like the Beaufort County Elections and Registration Board would likewise constitute an office for dual office holding purposes.

As I have concluded that membership on the Beaufort County Elections and Registration Board would constitute an office for dual office holding purposes, you wish to know what other boards and/or commissions those members may serve on without running afoul of the dual office prohibitions of the state Constitution. There are so many different boards or commissions, both state and local, to which individuals might be appointed that it is impossible to list those which would and those which would not be considered offices. It is necessary to examine how a particular position was created, whether there are qualifications to be met by one who would serve in the position, what the duties are, if the duties are specified, whether one takes an oath prior to assuming the duties, whether compensation is paid, and, most importantly, whether the position involves an exercise of a portion of the sovereign power of the state. In addition, some positions of employment are considered offices for dual office holding purposes, such types of employment typically (but not limited to) being of a law enforcement nature. It is impossible to generalize with respect to dual office holding questions. If you will advise as to the particular positions you are concerned about, I will be happy to look into those positions and advise you further. (If the position is one created by ordinance or resolution of a local government, it would be necessary to examine the ordinance or resolution which created it, I might add.)

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

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the specific questions asked. It has not been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kindest regards, I am

Sincerely,

*Patricia D. Petway*

Patricia D. Petway  
Senior Assistant Attorney General