

5958 Helms



The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON  
ATTORNEY GENERAL

May 31, 1996

Ms. Nancy W. Knowles  
164 Widener Road  
Aiken, South Carolina 29803

RE: Informal Opinion

Dear Ms. Knowles:

By your letter of May 27, 1996, to the Office of Attorney General Condon, you have asked two questions concerning your potential, concurrent service on the South Carolina Commission for the Blind and the South Carolina State Independent Living Council. One question pertains to a possible conflict of interest, recusal from discussion and voting, and the like, if you were to serve on both commissions. I understand that you have also written to the State Ethics Commission; because a response to this question necessarily involves an interpretation of the state's ethics laws, this Office defers to the judgment of the State Ethics Commission on questions such as this one. Your second question was whether there would be any prohibition against serving on both commissions at the same time; the issue to be addressed is known as dual office holding.

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).

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This Office has advised previously that one who would serve on the governing body of the South Carolina Commission for the Blind would hold an office for dual office holding purposes. Enclosed please find a copy of an opinion dated August 15, 1974, so concluding.

This Office has apparently never considered whether one who would serve on the South Carolina State Independent Living Council would be considered an office holder for dual office holding purposes. My research shows that the Council is established in this State pursuant to 29 U.S.C. §796d. Subsection (a) of that federal law specifically states that such Council "shall not be established as an entity within a State agency." The federal law provides for composition of the Council, terms for the members to serve, qualifications for membership, voting, compensation, and duties of the members. Essentially, a state is required to have such a Council as a requirement for the receipt of federal funds relative to certain vocational rehabilitation programs.

Numerous opinions have been issued by this Office in past years considering whether offices or positions required by or otherwise established under federal law would be considered offices for purposes of the state constitutional prohibition against dual office holding. Each of those opinions has concluded that a position established pursuant to federal law would not be considered an office for purposes of the state constitutional prohibition found in Article XVII, Section 1A. See, as examples, opinions dated July 23, 1987 (part-time federal magistrate); March 21, 1979 and February 8, 1965 (postmaster); June 21, 1993 (United States Marshal); September 15, 1982 (special federal prosecutor); March 11, 1982 (State Environmental Quality Control Advisory Committee); June 8, 1977 (unspecified federal office); November 20, 1975 (South Carolina Developmental Disabilities Council); December 27, 1966 and September 11, 1964 (selective service boards); November 21, 1960 (United States Commissioner); and August 19, 1960 (Agricultural Stabilization and Conservation Commission). I discern no reason to treat membership on the federally-required South Carolina State Independent Living Council any differently from the way federal positions have been treated in past years.

Based on the foregoing, I would advise that your concurrent service on the South Carolina Commission for the Blind and on the South Carolina State Independent Living Council would not violate the dual office prohibitions of the South Carolina Constitution. As to any actions to take in the event of a perceived conflict of interest (refraining from discussion or recusal from voting, as examples), such advice would more properly come from the State Ethics Commission.

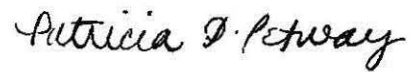
This letter is an informal opinion only. It has been written by a designated Senior Assistant Attorney General and represents the position of the undersigned attorney as to

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the specific questions asked. It has not, however, 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  
Senior Assistant Attorney General

Enclosure