

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

August 6, 1991

Ms. Gladys N. Jones
Clerk to Council, Jasper County
P. O. Drawer F
Ridgeland, South Carolina 29936

Dear Ms. Jones:

You have asked whether individuals may serve concurrently on the Live Oaks Hospital Board of Commissioners and the Jasper County Planning Commission Appeals Board, the Allendale-Hampton-Jasper Commission on Alcohol and Drug Abuse, the Jasper County Election Commission, or the Jasper County Development Board. As discussed below, it is the opinion of this Office that a person concurrently serving on the Live Oaks Hospital Commission and any of the other Boards or Commissions listed above would most probably contravene the prohibition against dual office holding.

Pursuant to Article XVII Section 1A of the South Carolina Constitution, "...no person may hold two Offices of honor or profit at the same time ... (except) an officer in the militia, member of a lawfully and regularly organized fire department, constable or a notary public." A public officer has been defined as

one who is charged by law with duties involving an exercise of some part of the sovereign power, either small or great, in the performance of which the public is concerned, and which are continuing, and not occasional or intermittent

...

Sanders v. Belue, 78 S.C. 171, 58 S.E. 762, 763 (1907). Other relevant indicia include whether statutes or other authority establish the position, prescribe its duties, tenure, salary, and bond or require oath or qualifications. State v. Crenshaw, 274 S.C. 475, 266 S.E.2d 61 (1980).

This Office has previously advised that one who serves on the Jasper County Development Board would hold an office for dual office holding purposes. See, Ops. Atty. Gen. dated December 20, 1977 and August 13, 1980. Also, this Office has concluded on numerous occasions that one serving on county election commissions would hold

Ms. Jones
Page 2
August 6, 1991

an office for dual office holding purposes. See, Ops. Atty. Gen. dated June 19, 1991; February 8, 1991; May 20, 1986; September 24, 1982.

The Allendale-Hampton-Jasper Commission on Alcohol and Drug Abuse was established by Act No. 301 of 1973 and by an ordinance of Jasper County dated August 18, 1986. Both provide for the tenure and qualifications of the members and prescribe their powers and duties. The Commission possesses the power to purchase land, enter into contract, employ personnel, accept funds and make expenditures. It also must develop and assist in the implementation of a comprehensive regional plan. Based upon these considerations and prior opinions of this Office finding that a member of a county alcohol and drug abuse commission with similar duties was an officer for dual office holding purposes, it is the opinion of this Office that a member of the Allendale-Hampton-Jasper Commission on Alcohol and Drug Abuse would most probably be an officer within the meaning of Article XVII Section 1A. See, Ops. Atty. Gen. March 6, 1989 (member of Charleston County Substance Abuse Commission is an officer); February 13, 1984 (Commission member of Cherokee County Commission on Alcohol and Drug Abuse is an officer); December 10, 1981 (Board member of Lexington-Richland Alcohol and Drug Abuse Council is an officer).

You have indicated that you have been unable to locate and provide to our Office an ordinance or resolution concerning the Jasper County Planning Commission Appeals Board. For purposes of your inquiry, then, this Office will assume, initially, that the Board was established pursuant to and operates under provisions similar to S.C. Code Ann. § 6-7-740 which pertains to boards of zoning appeals and zoning boards of adjustment. Section 6-7-740 establishes the position, prescribes the tenure and duties of the zoning appeals or zoning board of adjustment members. The members have the power to adopt rules and hear and decide appeals, grant variances upon appeal, hear and decide special zoning exceptions, issue or direct issuance of permits, and subpoena witnesses. The statute also provides that "none of the members may hold any other public office or position in the municipality or county." This Office has previously opined that members of the Richland County Board of Assessment Appeals and Horry County Board of Assessment Appeals would most probably hold offices for dual office holding purposes. See Ops. Atty. Gen. December 11, 1990; June 1, 1987. See also Op. Atty. Gen. No. 85-121 (member of Lee County Tax Appeals Board would be an office holder). The discharge of the duties as described in the statute would be quasi-judicial and would involve an exercise of sovereign power. It is the opinion of this Office that a member of the Jasper County Planning Commission Appeals Board, if the board was created pursuant to Section 6-7-740, would most probably hold an office for dual office holding purposes.

Ms. Jones
Page 3
August 6, 1991

In the event that the Planning Commission Appeals Board was instead established pursuant to S.C. Code Ann. Sections 6-7-310 to 6-7-390, this Office has also previously concluded that a member of a planning commission created pursuant to that statutory authority would hold an office for dual office holding purposes. See Op. Atty. Gen. April 28, 1982 and January 7, 1980 (member of Beaufort County Joint Planning Commission would be an office holder); April 7, 1977 (member of Williamsburg County Planning Commission would be an office holder). The statute creating the Board establishes fixed terms for the members and provides for compensation to be determined by the governing authority. The Board is empowered to prepare a plan and program for the physical, economic and social growth of the jurisdiction. In accomplishing its purpose, the Board may prepare and recommend: (1) the means for implementation of its plan; (2) zoning ordinances and regulations; (3) regulations for subdivisions; (4) an official map; and (5) a capital program. The Board may also adopt rules, employ staff, make expenditures, enter into contracts, make examinations and surveys, place and maintain monuments, and make and distribute maps, plans, and reports. It is the opinion of this Office that a member of the Planning Commission Appeals Board, if established pursuant to and operates under provisions similar to Sections 6-7-310 to 6-7-390, would be an office holder within the meaning of Article XVII, Section 1A. We caution, however, that as we do not have a copy of a Jasper County ordinance or resolution concerning the Planning Commission Appeals Board, we are unable to say with certainty that a board member would be an office holder.

The Live Oaks Hospital Board of Commissioners appears to have been originally created as the Jasper County Board of Hospital Trustees by Act No. 719, 1969 Acts and Joint Resolutions which was replaced by Act No. 784, 1971 Acts and Joint Resolutions, and numerous amendments thereto, and eventually repealed altogether in 1978. See Act 1870, 1972 Acts and Joint Resolutions; Act No. 694, 1973 Acts and Joint Resolutions; Act No. 401, 1975 Acts and Joint Resolutions; Act No. 345, 1977 Acts and Joint Resolutions; Act No. 779, 1978 Acts and Joint Resolutions. You have provided a copy of ordinance Misc. 6-333 adopted November 6, 1978 in which the Jasper County Council appears to have recreated the Jasper County Hospital Commission. We assume the name was subsequently changed to the Live Oaks Hospital Board of Commissioners. According to the ordinance, the commission is to consist of seven members to be appointed by county council. Residency requirements are specified as are terms of service. There are no provisions concerning an oath or compensation. The powers and duties to be exercised by the commission members include the general management of the hospital, care of real estate and other hospital property, supervision of construction,

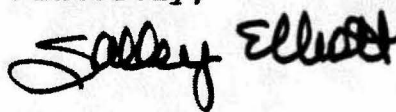
Ms. Jones
Page 4
August 6, 1991

adoption of rules regarding admission, discharge, and conduct, receipt and expenditure of funds, preparation of budgets, authorization of investments, real estate conveyances, regulation of patient charges and expenses to the hospital, and acceptance of gifts. These duties appear to involve an exercise of a portion of the sovereign power of the State. It is the opinion of this Office that one who serves on the Live Oaks Hospital Board of Commissioners would most probably hold an office for dual office holding purposes. See Ops. Atty. Gen. February 19, 1975 (member of Orangeburg Regional Hospital Board holds office); March 1, 1979 (member of Williamsburg County Hospital Board holds office); January 13, 1983 (member of Clarendon Hospital District Board of Trustees holds office); March 10, 1983 (member of Greenwood County Hospital Board holds office); August 29, 1984 (member of Charleston Memorial Hospital Board holds office); September 6, 1984 (member of Barnwell County Hospital and Nursing Home Board holds office); December 17, 1990 (member of Loris Community Hospital Board holds office); and April 5, 1991 (member of Greenville Hospital System Board holds office).

Considering the foregoing, it is the opinion of this Office that an individual serving simultaneously on the Live Oaks Hospital Board of Commissioners and on any one of the other boards or commissions discussed would most likely contravene the dual office holding prohibitions of the State Constitution.

If more information is needed, please advise.

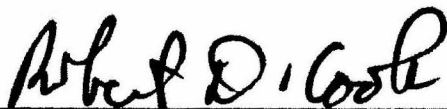
Sincerely,



Salley W. Elliott
Assistant Attorney General

SWE/an

REVIEWED AND APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions