

The State of South Carolina



Office of the Attorney General

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November 27, 1991

The Honorable Robert E. David
Executive Director
South Carolina Employment Security Commission
Post Office Box 995
Columbia, South Carolina 29202

Dear Mr. David:

By your letter of October 30, 1991, you have asked whether an individual temporarily employed by the South Carolina Employment Security Commission as a Manpower Specialist I would violate the constitutional prohibitions against dual office holding if he were to serve simultaneously on a city council or in the performance of his various civic and community-related activities. You enclosed a copy of the individual's job specifications and his resume outlining his civic and cultural activities.

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).

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This Office advised the individual in question, by an opinion dated October 18, 1988 (enclosed), that his simultaneous service on a city council and the Kershaw County Industrial Development Board would probably not constitute dual office holding. The individual's resume lists a variety of civic and community activities, but none of those listed appears to rise to the level of an office. (For instance, eleemosynary corporate positions and memberships on advisory boards are not usually considered to be offices.) Thus, whether the position of Manpower Specialist I constitutes an office remains to be considered.

The position of Manpower Specialist I, class code 2601, does not appear to have been created by statute or ordinance, but instead by action of the Employment Security Commission. No statute or similar legislative act specifies a specific tenure for the incumbent; instead, the incumbent occupies the position at the will of the agency (or duration of a contract, for example). Compensation is paid, in the form of a salary. The prescribed qualifications are not found in a statute or other legislative act, nor are the duties exercised by the incumbent so specified. The incumbent "performs routine administrative and technical duties assisting local offices professional and technical personnel in activities of the Employment Security Commission." These duties include registering applicants and taking job orders; referral of applicants to employers; interviewing applicants; explaining unemployment compensation programs; keeping records; performing various technical duties; and the like.

A review of these factors leads to the conclusion that the incumbent in this position would be considered an employee rather than an office-holder. The duties exercised as listed above do not constitute an exercise of a portion of the sovereign power of the state, and a number of the other criteria usually found in an office are lacking. Thus, the individual does not appear to be holding dual offices as would be prohibited by the state Constitution.

We trust that the foregoing has satisfactorily responded to your inquiry. Please advise if we may provide clarification or additional assistance.

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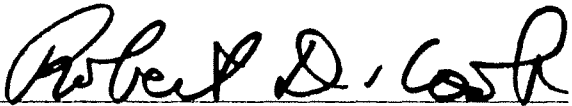
With kindest regards, I am

Sincerely,

Patricia D. Petway
Patricia D. Petway
Assistant Attorney General

PDP/an
Enclosure

REVIEWED AND APPROVED BY:


Robert D. Cook
Executive Assistant for Opinions