

## The State of South Carolina



## Office of the Attorney General

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October 23, 1991

Thomas M. Boulware, Esquire  
Attorney for Barnwell County Hospital  
Post Office Box 248  
Barnwell, South Carolina 29812

Dear Mr. Boulware:

As attorney for the Barnwell County Hospital Board of Trustees, you have asked whether it would be permissible for the Barnwell County Hospital Administrator to offer for election as the Barnwell County Coroner. Your concern is whether the dual office holding prohibitions of the State Constitution would be violated by simultaneous service in both capacities.

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).

This Office has advised on numerous occasions that one who serves as a coroner would hold an office for dual office holding purposes. See, for example, an opinion of this Office dated February 16, 1983, copy enclosed.

Apparently this Office has never considered whether the administrator of the Barnwell County Hospital would hold an office for dual office holding purposes. A review of the job description enclosed with your letter indicates that the position is created by the hospital's governing board rather than by statute or ordinance. Experience and qualifications are specified

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for the incumbent, though not by statute or ordinance. No specific term of years is provided for, nor does an oath seem to be required. The incumbent receives compensation in the form of a salary. Duties, both general and specific, are detailed in the job description; a review of these duties shows that the administrator most probably does not exercise "a portion of the sovereign power of the State," as the critical powers require approval by the hospital's governing board prior to their exercise.

This Office concluded previously that the administrator of the Loris Community Hospital would not be considered an office holder but would be considered an employee; see Op. Atty. Gen. dated March 1, 1984, copy enclosed. The same conclusion would be reached as to the administrator of the Barnwell County Hospital; thus there would most probably not be a dual office holding problem if he were to serve concurrently as coroner.

There are a few other factors to be considered. For example, see Op. Atty. Gen. dated April 20, 1987, copy enclosed, as to the potential for conflict of interest and a means to avoid same. Too, whether the hospital's governing board or county council may have adopted a policy about political activity should be determined. If the administrator's position is related to federal funds, the Hatch Act may require consideration; if that be the case, you may wish to request a ruling from the U. S. Merit Systems Protection Board in Washington, D. C.

We trust that the foregoing will be helpful. Please let me know if we may provide clarification or additional assistance.

With kindest regards, I am

Sincerely,

*Patricia D. Petway*

Patricia D. Petway  
Assistant Attorney General

PDP/klw  
Enclosures

REVIEWED AND APPROVED BY:

*Robert D. Cook*

Robert D. Cook  
Executive Assistant for Opinions