

## The State of South Carolina



## Office of the Attorney General

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March 16, 1990

Robert L. Kilgo, Jr., Esquire  
Post Office Box 581  
Darlington, South Carolina 29532

Dear Mr. Kilgo:

You have requested the opinion of this Office as to whether a person may serve simultaneously on the Darlington Housing Authority and as a member of the Darlington County Ambulance Commission without running afoul of the dual office holding prohibitions of the State Constitution. You have forwarded copies of the appropriate ordinances for our consideration, and you have advised that the individual in question more recently assumed membership on the Housing Authority board, having been sworn in on February 1, 1990.

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 opined on several occasions that one who serves on a housing authority board would hold an office for dual office holding purposes. See Ops. Atty. Gen. dated March 10, 1988 (copy enclosed); June 5, 1973; August 27, 1985; March 7, 1979; September 25, 1980; March 5, 1976; December 18, 1984; November 18, 1986; and October 16, 1987. Thus, we are of the opinion that one who would serve as a member of the Darlington Housing Authority would hold an office for dual office holding purposes.

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Ordinance No. 97 of Darlington County Council, effective August 17, 1981, established the Darlington County Ambulance Service District and further established a governing commission. The ordinance specifies that a member "shall hold office for a term of three years" and until a successor shall have been appointed and qualify. Other than residence in Darlington County, no qualifications are specified for the commissioners. No oath is required for commissioners, according to the ordinance.

Powers to be exercised by the commissioners are detailed in Section IV of the ordinance and to some extent in other sections, and in Ordinance No. 103 of Darlington County Council, which is applicable to members of all county boards, commissions, committees, and agencies. The specified powers include the power to sue and be sued; to make by-laws; to acquire lands; to expend monies; to acquire and operate appropriate equipment; to make rules and regulations; to make contracts and execute instruments; to grant franchises for the right to furnish ambulance services; and others. It appears that these duties are among those usually included in the exercise of a portion of the sovereign power of the State.

Considering all of the foregoing, it is the opinion of this Office that one who would serve on the Darlington County Ambulance Commission would most probably hold an office for dual office holding purposes.<sup>1/</sup> Thus, simultaneous service by that individual on the Darlington Housing Authority would most probably constitute dual office holding.

You have also asked whether the individual, having recently been sworn in as a member of the Housing Authority board, may continue to serve on the ambulance commission; or, you ask whether the individual has effectively resigned from the ambulance commission by accepting the office on the housing authority. We have advised the following previously:

If one person holds one office ...on the date he assumes a second office..., both offices falling within the provisions of Article XVII, §1A of the Constitution, he is deemed to have

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<sup>1/</sup> Ordinance No. 97 refers to members of this commission as holding office in several places; such is at least some evidence of Darlington County Council's intent that the position be an office, or that the incumbent hold an office.

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vacated the former office. However, that person may continue to perform the duties of the previously held office as a de facto officer, rather than de jure, until a successor is duly selected to complete his term of office (or to assume his duties if the term of service is indefinite).

Op. Atty. Gen. dated February 10, 1984 (see enclosed opinion for legal citations and footnote omitted from the quotation, all of which explain the concept of de jure and de facto officers). Thus, the individual effectively vacated membership on the ambulance commission by assuming membership on the housing authority board but may continue to serve on the ambulance commission as a de facto member until a successor is selected and qualifies.

With kindest regards, I am

Sincerely,

*Patricia D. Petway*

Patricia D. Petway  
Assistant Attorney General

PDP/nnw  
Enclosures

REVIEWED AND APPROVED BY:

*Robert D. Cook*

Robert D. Cook  
Executive Assistant for Opinions