

The State of South Carolina

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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

February 21, 1990

V. Laniel Chapman, Esquire
Post Office Box 2506
Anderson, South Carolina 29622

Dear Mr. Chapman:

By your letter of January 30, 1990, you have asked for the opinion of this Office as to whether you might serve on the Anderson County Courthouse Building Authority and on the Highway Commission without contravening the dual office holding prohibitions of the State Constitution. For our consideration, you have provided a copy of the ordinance of Anderson County Council creating the Anderson County Courthouse Building Authority.

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 several occasions that one who serves as a Highway Commissioner would hold an office for dual office holding purposes. See, for examples, Ops. Atty. Gen. dated March 27, 1984 (copy enclosed); April 13, 1979; and January 26, 1970, among others. Thus, the status of a member of the Anderson County Courthouse Building Authority must be determined.

The Anderson County Courthouse Building Authority (hereinafter "Authority") was created by Ordinance No. 246 of Anderson County Council, which ordinance received third reading on April 5, 1988. The ordinance does not specify any qualifications for a member of the Authority to meet. No oath is required of members, and the ordinance does not provide for any compensation to be paid to members. On the face of the ordinance, it appears that members serve

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from the time of appointment until after the new courthouse is ready for occupancy; provision is made for service until one's successor has been appointed, however, so that tenure in reality appears to be at the will of Anderson County Council, the appointing body.

Duties of Authority members are specified in the ordinance and include the oversight of the building of the new courthouse. Section 4 of the ordinance specifies various powers to be exercised and includes such matters as making various contracts, purchasing real and personal property, reviewing relevant laws, appointing agents and officers and prescribing duties and compensation, and the like. However, Anderson County Council has issued the bonds relative to construction of the courthouse, prior to creation of the Authority. Council provides any funding which the Authority might need. Council must approve proposals submitted to it by the Authority; as stated in section 5 of the ordinance, "no such action by the Authority shall be valid and effective until approved by County Council." Because Anderson County Council has retained oversight and the final authority to enter into contracts or otherwise obligate Anderson County, it appears that Anderson County Council rather than the Authority actually exercises sovereign power in this instance.

Considering the foregoing, it is apparent that members of the Anderson County Courthouse Building Authority do not meet a substantial number of the criteria usually found in public officers. For this reason, it is our opinion that one who serves on the Anderson County Courthouse Building Authority would most probably not be considered an officer for dual office holding purposes. Thus, such a member could also serve as a member of the Highway Commission without contravening the dual office holding prohibitions of the State Constitution.

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
Robert D. Cook
Executive Assistant for Opinions