

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 6, 1990

Michael J. Cavanaugh, Executive Director
South Carolina Department of Probation,
Parole and Pardon Services
Post Office Box 50666
Columbia, South Carolina 29250

Dear Mr. Cavanaugh:

By your letter of January 26, 1990, you have asked for the opinion of this Office as to whether one individual may serve concurrently as a probation and parole agent for your agency and on the Abbeville County Emergency Medical Services Commission without running afoul of the dual office holding prohibitions of the Constitution of the State of South Carolina.

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).

As you stated in your letter, this Office has previously advised that a probation and parole agent for the South Carolina Department of Probation, Parole, and Pardon Services would be considered an office-holder for dual office holding purposes. See Ops. Atty. Gen. dated March 13, 1985 (copy enclosed); July 11, 1984;

Mr. Cavanaugh
Page 2
February 6, 1990

July 21, 1981; September 27, 1982; October 8, 1975; and December 16, 1964. It must therefore be determined whether a member of the Abbeville County Emergency Medical Services Commission would be considered an office-holder.

Enclosed with your letter was a copy of an ordinance creating the Abbeville County Emergency Medical Services Commission, which must be analyzed to resolve your question. The Commission was established to "provide quality prehospital and emergency care" for persons in Abbeville County requiring such care and also to "serve as the duly recognized liaison between County Council and the respective squads." The Commission is to consist of nine members who are to meet certain qualifications; the individual about whom you are inquiring would be a representative of one of the area rescue squads, whose appointment "shall be affirmed by County Council." Tenure on the Commission is specified as a one-year term and until one's successor has been appointed and qualified; the ordinance states that "[a]ll commissioners shall hold office for their respective terms" (Emphasis added.) No provision is made for an oath or compensation.

Section V of the ordinance specifies that the duty of the Commission shall be "to investigate and resolve any situations arising out of the normal function of the Emergency Medical Services System." Powers of the Commission are specified in Section VI and include such activities as making by-laws; establishing policies and procedures for operation of the emergency medical service (subject to approval by county council); acquiring real estate and equipment to be used in operation of facilities; reviewing or auditing financial records of the rescue squads relative to tax funds; making recommendations as to appointment of the EMS director; receiving, reviewing, and approving budget requests from the rescue squads and the EMS director for submission to county council; delegating (as specified in the ordinance) certain investigatory powers; and requiring that all emergency/ambulance service providers be licensed by the Commission. Such activities (particularly the establishing of policies and procedures, investigatory powers, auditing, and licensing) would appear to involve an exercise of a portion of the sovereign power of the State.

Considering all of the foregoing factors, it appears that one who would serve as a member of the Abbeville County Emergency Medical Services Commission would most probably hold an office for dual office holding purposes. Thus, a probation and parole agent from your agency would most probably run afoul of the constitutional dual

Mr. Cavanaugh
Page 3
February 6, 1990

office holding prohibitions if he were to serve concurrently on the Abbeville County Emergency Medical Services Commission.

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

cc: Gene Pruitt, Esquire