

## The State of South Carolina



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January 10, 1990

Mr. Harrison Rearden  
Deputy Commissioner  
South Carolina Department of  
Social Services  
Post Office Box 1520  
Columbia, South Carolina 29202-1520

Dear Mr. Harrison:

By your letter of December 15, 1989, you have asked for the opinion of this Office as to whether a Deputy Commissioner of the South Carolina Department of Social Services may serve simultaneously on a county planning commission without running afoul of the dual office prohibitions of the State Constitution.

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).

Prior opinions of this Office have consistently concluded that a member of a county planning commission would hold an office for dual office holding purposes. See Op. Atty. Gen. dated January 31, 1984, a copy of which is enclosed; and opinions dated March 29, 1982; January 7, 1980; April 28, 1982; April 7, 1977; June 24, 1982; and December 31, 1980.

The position of Deputy Commissioner, Office of Audits, Investigations and Support Services of the South Carolina Department of Social Services, was not created by statute. No statute specifies qualifications to be met by the incumbent or duties to be carried out. No oath is required to be taken prior to assumption of duties. Tenure is "at will" rather than for a specific term of years. Compensation, in the form of salary, is paid to the incumbent.

As stated in the position's Managerial Position Description, the purposes of the position include ensuring the integrity of the agency's administrative and programmatic operations; statewide coordination of client and provider appeals; compliance of agency vendors and county departments with civil rights statutes; and provision of adequate facilities, equipment, supplies and other support services. Specifically, the incumbent is accountable for vehicle fleet management; mail and courier services; supply and equipment purchases; oversight of audits and investigations (which are carried out by other personnel); oversight of administrative reviews, appeals, consent agreements (again, carried out by other personnel); and so forth. Approximately sixty percent of the incumbent's time is spent on reviewing, assessing, and following up on management reports; twenty percent, on planning and similar activities; and twenty percent, on communications intra-agency, interagency, and with federal officials. These duties do not appear to involve an exercise of sovereign power by the incumbent.

Considering all of the foregoing factors, it is our opinion that the position of Deputy Commissioner of the South Carolina Department of Social Services would be a position of employment rather than an office. In that regard, the following from Sanders v. Belue, supra, is apposite:

[O]ne who merely performs the duties required of him by persons employing him under an express contract or otherwise, though such persons be themselves public officers, and though the employment be in or about a public work or business, is a mere employee.

Id., 78 S.C. at 174.

Thus, it must be concluded that a Deputy Commissioner of the South Carolina Department of Social Services, holding the above-described position, could also serve on a county planning commission without contravening the dual office holding prohibitions of the State Constitution.

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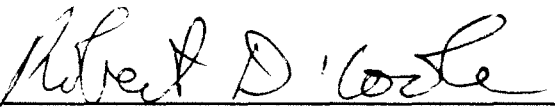
With kindest regards, I am

Sincerely,

*Patricia D. Petway*  
Patricia D. Petway  
Assistant Attorney General

PDP/nnw  
Enclosure

REVIEWED AND APPROVED BY:

  
Robert D. Cook  
Executive Assistant for Opinions