

4171 Library

The State of South Carolina



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

August 6, 1990

The Honorable Juanita M. White
Member, House of Representatives
Route 1, Box 184-A
Hardeeville, South Carolina 29927

Dear Representative White:

By your letter of June 20, 1990, you have inquired about dual office holding in the event a member of a city council should also serve on the Board of the Area Commission of the Technical College of the Low Country. You advise that the Governor's Office has advised one of your constituents that concurrent service in both capacities would constitute dual office holding. You have asked for our opinion on the question and, if we agree with the Governor's Office, you ask that we differentiate this situation from that of a member of the General Assembly serving on a state board (i.e., the South Carolina Coastal Council) or some other local board.

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 concluded on numerous occasions that one who serves on a city council would hold an office for dual office holding purposes. See, for examples, opinions of this Office dated November 20, 1989 (copy enclosed); September 7, 1989; October 18, 1988; May 20, 1986; and February 18, 1986, among many others.

The Honorable Juanita M. White
Page 2
August 6, 1990

This Office has not previously opined on whether service on the Area Commission of the Technical College of the Low Country would constitute an office for dual office holding purposes. The college itself, until recently, was known as Beaufort Technical College and was under the direction of the State Board for Technical and Comprehensive Education for many years, rather than its own governing body. The statutory authority relative to the Commission is found at Section 59-53-910 et seq. of the South Carolina Code of Laws.

In accordance with the criteria listed above, we note that the Area Commission was established by Section 59-53-910 to be a body politic and corporate. The Commission is appointed as specified, with only residency in one of the counties served by the Commission specified as a qualification. The statute provides for a term of four years and until successors are appointed and qualify. The statutes relative to this entity are silent as to an oath being required or compensation being paid to commissioners.

Powers of this Commission are specified in Section 59-53-930:

The Commission has the same powers as provided in Article 1, Chapter 53, Title 59 of the 1976 Code, and in addition must prepare and submit its annual budget for approval to the State Board for Technical and Comprehensive Education. Beaufort Technical College must be funded in accordance with the provisions of §§ 59-53-51, 59-53-52, and 59-53-57.

In particular in Article 1 of Chapter 53 of Title 59, powers of area commissions are specified in Section 59-53-52 and include such powers as adopting bylaws, rules, and regulations; acquiring sites and constructing facilities; acquiring property by various means; operating institutional facilities; employing the chief administrative officer and other personnel; expending funds; exercising the right of eminent domain; awarding degrees and certificates; and the like. Section 59-53-53 authorizes area commissions to borrow funds for capital improvements, as specified. Clearly, the exercise of these powers by any area commission would be the exercise of a portion of the sovereign power of the State.

Considering all of the foregoing factors, it must be concluded that one who serves on the Area Commission of the Technical College of the Low Country would hold an office for dual office holding purposes. This conclusion has been reached with respect to other area commissions, by opinions of this Office dated February 1, 1985 (Horry-Georgetown); January 31, 1985 (Chesterfield-Marlboro); February 15, 1984 (Richland-Lexington, now Midlands); June 24, 1984 (Sumter Area); and September 11, 1965 (Anderson-Oconee-Pickens).

The Honorable Juanita M. White
Page 3
August 6, 1990

Because we would conclude that both positions would be offices for dual office holding purposes, we would concur with advice given by the Governor's Office in this matter.

With respect to your second question, differentiating the above situation from that of a member of the General Assembly serving on another state or local board (mentioning specifically the South Carolina Coastal Council), we first note that no blanket opinion can be written to cover all possible office-holding situations; each unique situation must be considered on its own merits. This Office, by Opinion No. 77-183 dated June 10, 1977, concluded that

[s]ince [Coastal] Council membership constitutes an office, members cannot hold a second office without violating Constitutional restrictions on dual office holding. Elected state and local officials ... could not serve on the council without violating dual office restrictions.

A copy of the entire opinion is enclosed for your review. Article III, Section 11 of the State Constitution provides that "[e]ach house shall judge of the ... qualifications of its own members" While this Office may opine on a matter involving a member of the General Assembly as in Opinion No. 77-183, it is the constitutional right of each legislative body to judge its members' qualifications and take whatever actions may be necessary and permissible.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/an

Enclosures

REVIEWED AND APPROVED BY:

Robert D. Cook

Robert D. Cook
Executive Assistant for Opinions