

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

September 13, 1990

The Honorable D. N. Holt, Jr., Chairman
Charleston County Joint Legislative Delegation
2 Courthouse Square, Room 317-A
Charleston, South Carolina 29401

Dear Representative Holt:

By your letter of August 20, 1990, you have asked for the opinion of this Office as to whether an individual may serve concurrently on the North Charleston Public Service District governing board and as a member of the House of Representatives. The question was asked in terms of a conflict of interest, but the potential problem would actually be that of dual office holding.

Article III, Section 24 of the South Carolina Constitution provides that "[n]o person shall be eligible to a seat in the General Assembly while he holds any office or position of profit or trust under this State" ^{1/} For this provision to be contravened, a member of the General Assembly would hold another public office, the duties of which would involve 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). It must thus be determined whether membership on the governing board of the North Charleston Public Service District would constitute an "office or position of profit or trust."

^{1/} Exceptions are made in the constitutional provision for service in the militia, membership in lawfully and regularly organized fire departments, constables, and notaries public.

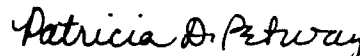
The Honorable D. N. Holt, Jr.
Page 2
September 13, 1990

In researching our files of previously-issued opinions, we found that we had previously addressed service on the North Charleston Public Service District board. By an opinion dated October 14, 1982, we concluded that such service would constitute an office for dual office holding purposes; a copy of the opinion is enclosed herewith.

It would thus appear that concurrent service in the House of Representatives and on the governing board of the North Charleston Public Service District would most probably run afoul of the Article III, Section 24 prohibition. However, the final authority for determining this question would remain with the House of Representatives, by virtue of Article III, Section 11 of the Constitution. See Ops. Atty. Gen. dated December 11, 1985; December 10, 1984; and November 26, 1984; Culbertson v. Blatt, 194 S.C. 105, 9 S.E.2d 218 (1940).

We trust that the foregoing has satisfactorily responded to your inquiry. Please advise if clarification or additional assistance should be needed. With kindest regards, I am

Sincerely,



Patricia D. Petway
Assistant Attorney General

PDP/an

Enclosure

REVIEWED AND APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions