



Office of the Attorney General

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September 12, 1990

The Honorable Lee Blackburn
1919 E. Sandhurst Drive
Florence, South Carolina 29505

Dear Mr. Blackburn:

By your letter of September 5, 1990, to Attorney General Medlock, you have advised that you are being considered for an interim appointment to the Public Service Commission by the Governor; such appointment would be only for the period until a special election is held to fill this position, according to your letter. You presently serve on the Florence County Election Commission and the Agency Head Salary Commission. You have asked whether concurrent service on the Public Service Commission in addition to these two positions would contravene the dual office holding 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).

As you are already aware, this Office opined on July 13, 1989, that your service on the Florence County Election Commission would constitute an office for dual office holding purposes, and your service on the Agency Head Salary Commission would most probably not constitute an office for dual office holding purposes. Thus, it is

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necessary at this point to examine only the possible interim appointment to the Public Service Commission in the context of dual office holding.

This Office has previously determined that a member of the Public Service Commission would hold an office for dual office holding purposes. Op. Atty. Gen. dated June 22, 1982 (see page four) (copy enclosed). The same conclusion would be reached as to one who would be appointed to the Public Service Commission on an interim basis, as that person would take the oath of office required by Section 58-3-30 of the South Carolina Code of Laws, would receive compensation for his services pursuant to Section 58-3-70, and would exercise the same powers and duties as do the present commissioners. The fact that the term of office is not definite would not, by itself, defeat the conclusion that a position is an office. 63A Am.Jur.2d Public Officers and Employees § 6.

Based on the foregoing, it is our opinion that your service concurrently on the Florence County Election Commission and as an interim appointee to the Public Service Commission would most probably contravene the dual office holding prohibition 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