

The State of South Carolina



Office of the Attorney General

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July 16, 1991

The Honorable Paul M. Burch
Member, House of Representatives
Post Office Box 276
Pageland, South Carolina 29728

Dear Representative Burch:

By your letter of June 28, 1991 (received July 10, 1991), you have requested the opinion of our Office as to whether an individual may serve as both a member of a county school board and a Town Attorney without running afoul of the dual office holding proscriptions 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).

This Office has opined on numerous occasions that a member of a county board of education would hold an office for dual office holding purposes. As examples, see Ops. Atty. Gen. dated October 19, 1990 and March 16, 1989.

Similarly, this Office has concluded on numerous occasions that a Town or City Attorney would hold an office for dual office holding purposes. Enclosed are two opinions of this Office, both dated January 17, 1983, so concluding, as representative of the numerous opinions.

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Based on the foregoing, it is our opinion that one who would serve simultaneously as a member of a county school board and as a Town Attorney would most likely contravene the dual office holding prohibitions of the State Constitution.

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