

The State of South Carolina



Office of the Attorney General

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June 19, 1991

The Honorable John W. Matthews, Jr.
Senator, District No. 39
Post Office Box 460
Bowman, South Carolina 29018

Dear Senator Matthews:

You have inquired as to whether an individual may serve simultaneously on a county election commission and as a school district trustee without violating 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).

This Office has opined on numerous occasions that one who serves on a county election commission would hold an office for dual office holding purposes. See, as examples, Ops. Atty. Gen. dated February 8, 1991 (copy enclosed); September 12, 1990; July 24, 1980; and June 5, 1981.

Similarly, this Office has opined on many occasions that a school board trustee would hold an office for dual office holding purposes. See, as examples, Ops. Atty. Gen. dated August 8, 1990 (copy enclosed); September 26, 1986; and March 2, 1989, among many others.

The Honorable John W. Matthews, Jr.
Page 2
June 19, 1991

Based on the foregoing, it is the opinion of this Office that one who would serve simultaneously on a county election commission and as a school district trustee would most probably contravene the dual office holding prohibitions of the State Constitution. We further advise that when an individual, already holding one office, accepts a second office (both of which fall within the dual office holding prohibitions), the individual is deemed to have vacated the first office by his acceptance of the second office.


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
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