

## The State of South Carolina



## Office of the Attorney General

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January 9, 1992

Dr. T. C. McCain  
Edgefield County Administrator  
215 Jeter Street  
Edgefield, South Carolina 29824

Dear Dr. McCain:

On behalf of Edgefield County Council, you have asked whether an individual may serve simultaneously as a member of the Edgefield County Water and Sewer Authority and on the Edgefield County Hospital Board without contravening 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).

The Edgefield County Hospital governing body was created by acts of the General Assembly, as modified by Edgefield County Council as permitted after the advent of home rule. See § 3 of Act No. 283 of 1975. According to Ordinance No. 81-225 of Edgefield County, the Edgefield County Hospital is to be governed by a board of eleven members appointed by county council. A member serves a term of three years. No salary is to be paid, but a member in attendance at a

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meeting is entitled to per diem and mileage not to exceed ten dollars. The ordinance contains language which is indicative of office holding in two instances: (1) members are to "hold office" until their successors have been appointed and (2) a delay in appointing successors will lessen "the duration of the terms of office." Neither the ordinance nor the relevant acts seem to require an oath or specify qualifications for board members.

Powers and duties to be exercised by hospital board members are found in various acts of the General Assembly, including Act No. 1514 of 1968 and Act No. 1392 of 1970. The board may adopt and use a corporate seal; adopt bylaws, rules, and regulations; acquire property; accept grants, gifts, donations, devises, and bequests; staff and equip the hospital; promulgate rates; exercise the power of eminent domain; and so forth. These powers appear to involve the exercise of a portion of the sovereign power of the state.

Based on the foregoing, it is the opinion of this Office that one who serves on the Edgefield County Hospital governing body would hold an office for dual office holding purposes.

The Edgefield County Water and Sewer Authority was created by Act No. 571 of 1967 to be a body corporate and politic, to provide fresh water to and collect sewage from the specified areas of Edgefield County. Membership on the governing body of the Authority is addressed by Act No. 337 of 1973, which provides that seven members are to be appointed by the Governor upon recommendation of a majority of Edgefield County Council with approval of the House Delegation. A term of six years is specified. Act No. 337 of 1973 requires that members "hold office" until their successors have been appointed and qualify. Act No. 600 of 1986 authorizes members to receive a per diem of fifty dollars and mileage to be reimbursed as specified. No oath or qualifications for membership are specified.

Powers to be exercised by Authority members are detailed in Act No. 571 of 1967, as amended by Act No. 1192 of 1970 and Act No. 593 of 1971. These powers include adopting and using a corporate seal; the power to sue and be sued; to make bylaws, rules, regulations, and rates; to construct, equip, and maintain facilities and the like to provide water and to collect and treat sewage; to enter into contracts; to accept gifts and the like; to exercise the power of eminent domain; to borrow money; to issue bonds, notes, and other evidences of indebtedness; and others. These powers appear

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to involve an exercise of a portion of the sovereign power of the state.

Based on the foregoing, it is the opinion of this Office that a member of the governing body of the Edgefield County Water and Sewer Authority would hold an office for dual office holding purposes. Thus, one who would serve simultaneously on the Authority and as a member of the Edgefield County Hospital board would most probably contravene the dual office holding prohibitions of the State Constitution.

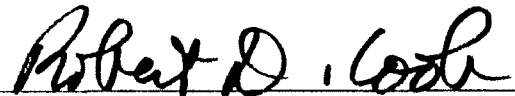
With kindest regards, I am

Sincerely,

*Patricia D. Petway*  
Patricia D. Petway  
Assistant Attorney General

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REVIEWED AND APPROVED BY:

  
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