

The State of South Carolina

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Office of the Attorney General

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September 11, 1992

James M. Brown, Superintendent of Education
School District of Oconee County
P. O. Box 220
Walhalla, South Carolina 29691

Dear Mr. Brown:

Our Office is in receipt of your September 9, 1992 request for an opinion. You state that one of the candidates for trustee of the Oconee County School Board currently serves as the county veteran's affairs officer. You also state that the county veteran's affairs officer is elected. You ask whether the individual would be eligible to hold both positions. I assume that you are asking whether a violation of the prohibition against dual office holding would be involved.

Pursuant to Article XVII Section 1A of the South Carolina Constitution, "... (n)o person may hold two Offices of honor or profit at the same time ... (except) an officer in the militia, member of a lawfully and regularly organized fire department, constable or a notary public." A public officer has been defined as

one who is charged by law with duties involving an exercise of some part of the sovereign power, either small or great, in the performance of which the public is concerned, and which are continuing, and not occasional or intermittent ...

Sanders v. Belue, 78 S.C. 171, 58 S.E. 762, 763 (1907). Other relevant indicia include whether statutes or other authority establish the position, prescribe its duties, tenure, salary, and bond or require oath or qualifications. State v. Crenshaw, 274 S.C. 475, 266 S.E.2d 61 (1980).

Mr. Brown

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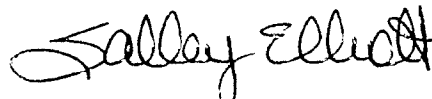
The Office has previously determined that an Oconee County School Board trustee holds an office for dual office holding purposes. See Op. Atty. Gen. dated March 8, 1972.

County veterans affairs officers, created by S.C. Code Section 25-11-40, are appointed by the State Director of Veteran's Affairs "subject to the recommendation of a majority of the Senators representing the county and a majority of the House members representing the county." I could locate no authority which required that I consider the county veteran's affairs officer elected rather than appointed.

Nevertheless, S.C. Code Section 8-1-130 exempts from the dual office holding consideration all county veterans affairs officers. As the legislature has created this specific exemption, it would appear that the individual about which you inquire would be eligible to serve in both positions.

If there are additional questions or if you care to discuss this matter further, please advise.

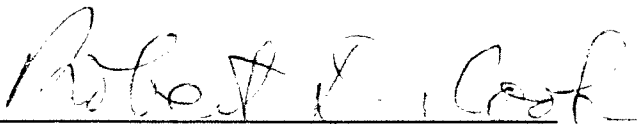
Sincerely



Salley W. Elliott
Assistant Attorney General

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REVIEWED AND APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions