

The State of South Carolina

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Office of the Attorney General

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September 4, 1992

The Honorable E. B. McLeod, Jr.
Member, House of Representatives
Route 1, Box 28
Pinewood, South Carolina 29125

Dear Representative McLeod:

You have advised this Office that you may seek employment as the director of the Clarendon County Public Service Commission. You have asked for our opinion as to whether your simultaneous service in the House of Representatives and as director of the Clarendon County Public Service Commission would constitute dual office holding, in contravention of the state Constitution.

Article III, Section 24 of the State Constitution contains the following proscription:

No person is eligible to a seat in the General Assembly while he holds any office or position of profit or trust under this State, the United States of America, or any of them, or under any other power, except officers in the militia, members of lawfully and regularly organized fire departments, constables, and notaries public. If any member accepts or exercises any of the disqualifying offices or positions he shall vacate his seat.

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,

Representative McLeod

Page 2

September 4, 1992

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).

We must also note that Article III, Section 11 of the State Constitution provides that "Each house shall judge of the ... qualifications of its own members" In questions of dual office holding, the House of Representatives or the Senate alone, as may be appropriate, judges the qualifications of its own members. Culbertson v. Blatt, 194 S.C. 105, 9 S.E.2d 218 (1940). While this Office may offer comments on the issues you have raised, we must respectfully defer to the judgment of the House of Representatives to actually determine that a member should be disqualified.

This Office has advised on numerous occasions that a member of the House of Representatives would hold an office. See for examples, Ops. Atty. Gen. dated September 13, 1990; November 26, 1984; and July 8, 1985, among many others. It is then necessary to examine the other position to resolve your inquiry.

The position of director of the Clarendon County Public Service Commission is mentioned in an ordinance of Clarendon County Council creating the Commission; that position is to be filled by the Commission. Qualifications requested of applicants were experience in water or sewer or solid waste systems, with a college degree preferred, though no ordinance sets forth those qualifications. A salary will be paid to the successful applicant, whose employment will be "at will," rather than for a term of years. No oath is required to be taken. The director will assume the day-to-day management of Commission activities, though no ordinance sets forth those duties. It does not appear, from information provided to our Office, that the director would exercise a portion of the sovereign power of the state.


Based on analysis of the foregoing, it is our opinion that one who would serve as director of the Clarendon County Public Service Commission would most probably be considered an employee rather than a public officer. As is stated in Sanders v. Belue, supra, 78 S.C. at 174, "... one who merely performs the duties required of him by persons employing him under an express contract or otherwise, though such persons be themselves public officers, and though the employment be in or about a public work or business, is a mere employee." Thus, one who is a member of the House of Representatives could most probably serve as director of the

Representative McLeod
Page 3
September 4, 1992

Clarendon County Public Service Commission without contravening the dual office holding prohibitions of the state Constitution. Of course, the House of Representatives would be the ultimate judge of the question, pursuant to Article III, Section 11 of the Constitution.


With kindest regards, I am

Sincerely,


Patricia D. Petway
Assistant Attorney General

PDP/an

REVIEWED AND APPROVED BY:


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