

# The State of South Carolina



## Office of the Attorney General

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April 5, 1991

*all 8/9/91*

Judith S. Burk, Esquire  
Greenville County Attorney  
Suite 100, 301 University Ridge  
Greenville, South Carolina 29601-3660

Dear Ms. Burk:

By your letter of March 14, 1991, you have asked whether one person may serve concurrently as a magistrate and as a member of the Board of the Greenville Hospital System without violating the dual office holding prohibitions of the State Constitution. You had also inquired by telephone whether the superintendent of Greenville County Schools might serve as a member of the Board of the Greenville Hospital System, as well.

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 advised previously that one who serves as a magistrate would hold an office for dual office holding purposes. See, Ops. Atty. Gen. dated August 13, 1986 (copy enclosed); March 23, 1987; June 19, 1987; and many others.

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This Office has also previously advised that the superintendent of Greenville County Schools would be considered an officer rather than an employee. Enclosed is a copy of an opinion dated March 16, 1984, so concluding.

We have apparently never considered whether a member of the Board of the Greenville Hospital System would hold an office. You have advised that the Greenville Hospital System was created by Act No. 626, 1965 Acts and Joint Resolutions; we have examined that act and Act No. 1285 of 1966 which amended the 1965 act, to resolve your questions.

As noted, the governing body of the Greenville Hospital System was created by an act of the General Assembly. See also Act No. 432 of 1947. The governing agency, according to § 4 of Act No. 626, is to consist of seven qualified electors of Greenville County. Residency requirements are specified for the members. Members are to serve six year "terms of office." Members are to serve without compensation. Though there is no express requirement that members take an oath, it is noted that the Governor is to issue commissions to the members and an oath may thus be taken in the commissioning process. Numerous references to holding office, taking office, vacancies in office, and the like are found throughout § 4.

Powers and duties to be exercised by board members are specified in § 3 and others of Act No. 626 of 1965, as amended by § 2 of Act No. 1285 of 1966. Some of these powers and duties include: adopting various rules and regulations; operating a hospital; establishing rates; entering into contracts; defining eligibility requirements for charity patients; exercising the power of eminent domain; incurring indebtedness; and others. In addition, § 7 of Act No. 626 authorizes the board to issue bonds, and § 15 authorizes the levy of taxes sufficient to pay the principal and interest of bonds so issued. Considering all of the foregoing, we must conclude that these powers and duties involve an exercise of a portion of the sovereign power of the State and further that a member of the governing board of the Greenville Hospital System would hold an office for dual office holding purposes.

Based on the foregoing, it is our opinion that one who would serve simultaneously as a magistrate and as a member of the board of the Greenville Hospital System would most probably contravene the dual office holding prohibitions of the State Constitution. Likewise, it is our opinion that one who would serve simultaneously as the superintendent of Greenville County Schools and as a member of

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the board of the Greenville Hospital System 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

PDP/an  
Enclosures

REVIEWED AND APPROVED BY:

*Robert D. Cook*

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Robert D. Cook  
Executive Assistant for Opinions