

The State of South Carolina



Office of the Attorney General

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
TELEPHONE: 803-734-3970
FACSIMILE: 803-253-6283

March 22, 1991

The Honorable Theo W. Mitchell
Senator, District No. 7
604 Gressette Building
Columbia, South Carolina 29202

Dear Senator Mitchell:

With reference to a situation in which a sitting member of a city council might be elected to the House of Representatives, you have asked whether such individual might transfer his retirement, medical and dental insurance. You have also asked whether, before being sworn in the General Assembly in January 1992, the individual may participate in voting. Each of your questions will be examined separately, as follows.

Retirement Benefits

For purposes of this response, it is assumed that the city council member is currently contributing to the South Carolina Retirement System (SCRS). See S.C. Ann. §§ 9-1-470, 9-1-480 and 9-1-10(4).

Members of the General Assembly become members of the Retirement System for Members of the General Assembly (RSMGA) upon their taking office as members of the General Assembly. § 9-9-40(1). Credited service may be established pursuant to § 9-9-50(2), which provides:

Notwithstanding any other provision of law, any member of the Retirement System for members of the General Assembly who has rendered service which would have been creditable under a correlated system may establish the service with this System, provided payment is made to the System on the same basis as members of the General Assembly contributed for the same period of time plus interest.

The term "correlated system" is defined in § 9-9-40(3) to include the SCRS.

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The individual in question may wish to consult the Retirement Systems personnel to determine how much he has contributed to the SCRS, how much he would have contributed had he been a member of the RSMGA over the same period of time, and what he would be required to pay to make up the difference in contributions, plus interest. Apparently this is not simply a matter of transferring contributions from one system to another.

Medical and Dental Benefits

We are advised by personnel in the Division of Insurance of the Budget and Control Board that members of the General Assembly are considered "employees" for health care benefits and thus are covered under the State Health Plan.

While some of the counties of this State do provide health insurance coverage under the State Health Plan, we are advised that no municipalities participate in the State Health Plan. Therefore, it is difficult to advise on your question of transferring benefits since we do not have access to the necessary information. The individual in question may wish to direct inquiries concerning continuation of coverage under his present insurance policy to the personnel department of his municipality or to the insurance carrier itself. He may also wish to inquire about continuation of coverage pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA), a federal law. A copy of a portion of the state employees' handbook on the state health insurance plan which explains the COBRA requirements is enclosed.

Voting

Your final question was whether the individual, if elected, could participate in voting before being sworn in the General Assembly in January 1992.

Article III, § 26 of the State Constitution provides in relevant part:

Members of the General Assembly, ... before they enter upon the duties of their respective offices, ... shall take and subscribe the following oath

The plain language of this constitutional provision requires one to take the prescribed oath of office prior to entering upon his duties as a legislator. Wellman v. Bethea, 243 F. 222 (D.S.C. 1917). Thus, in our view, it would be inappropriate for one to vote or otherwise act as a legislator until he has taken the oath of office. Of course, it would be up to the House of Representatives, by

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virtue of Article III, § 11, to determine whether any individual would be qualified to act as a member of the House.

Until such time as the individual should qualify to serve in the House, assuming he were elected, he could continue to serve on his city council (assuming his term did not expire in the intervening time). Dual office holding would not occur, in violation of Article III, § 24, unless the individual were to serve concurrently as a member of a city council and in the House of Representatives. 1/ See Op. Atty. Gen. dated November 6, 1987. Again, the privilege or responsibility of determining whether a House member might be holding two or more offices would remain with the House. Article III, § 11.

We trust that the foregoing has adequately responded to your inquiries. If we may assist you further, please advise.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/an
Enclosure

REVIEWED AND APPROVED BY:

Robert D. Cook

Robert D. Cook
Executive Assistant for Opinions

1/ This Office has advised on numerous occasions that one who serves on a city council would hold an office for dual office holding purposes. See Ops. Atty. Gen. dated December 11, 1990; September 7, 1989; November 20, 1989; and many others. Similarly, this Office has concluded that a member of the House of Representatives would hold an office. See Ops. Atty. Gen. dated September 13, 1990; December 11, 1985; June 11, 1985; and several others.