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The State of South Carolina



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July 1, 1992

C. C. Harness, III, General Counsel
South Carolina Coastal Council
4130 Faber Place, Suite 300
Charleston, South Carolina 29405

Dear Mr. Harness:

By your letter of June 2, 1992, you have advised that a member of the South Carolina Coastal Council will soon become the Executive Director of the State Election Commission. You have asked for the opinion of this Office as to whether that individual may serve simultaneously in both positions 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).

This Office has advised on several occasions that a member of the South Carolina Coastal Council would hold an office. See Ops. Atty. Gen. dated November 13, 1984; May 2, 1977; and June 2, 1977. The enabling legislation relative to the Coastal Council, S.C. Code Ann. § 48-39-10 et seq., has been amended since the 1984 opinion was issued; these amendments would not cause the conclusions of those opinions to change, however.

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The question of whether the Executive Director of the State Election Commission would hold an office has apparently never been addressed by an opinion of this Office. Section 7-3-20 of the Code provides in part:

(A) The State Election Commission shall elect an executive director who shall be directly responsible to the Commission and who shall serve at the pleasure of the Commission. The executive director shall be the chief administrative officer for the State Election Commission.

(B) The executive director shall receive such compensation and employ such staff, subject to the approval of the State Election Commission, as may be provided by law.

(C) The executive director shall:
[here follows a list of duties, powers,
and responsibilities.]

Thus, the position for Executive Director is created by a statute, which provides for election of the Executive Director (as contrasted with employment of other staff), to serve as the chief administrative officer of the Commission. The statute authorizes compensation to be paid. Other duties are specified in § 7-3-30. No oath is required; qualifications are not specified; and service is at the pleasure of the Commission.

An analysis of the duties or responsibilities of the Executive Director shows that the incumbent performs many duties related to the election and voter registration process in the state. In addition to the specified duties, § 7-3-20 (10) directs the Executive Director to "perform such other duties relating to elections as may be assigned him by the State Election Commission." Doing such seems to require the Executive Director to execute the decisions of the Commission and carry out Commission policies. Such would appear to involve an exercise a portion of the sovereign power of the state, in our opinion.

Persons occupying similar positions have been deemed office holders. For examples, see Ops. Atty. Gen. dated May 30, 1979 and November 10, 1988 as to county administrators (called "chief administrative officer of the county" in

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§ 4-9-630) and November 15, 1983 as to the Commissioner of the state Department of Social Services (called "chief executive officer" by statute). By way of contrast, we concluded that the Executive Director of the Children's Foster Care Review Board would not be considered an office holder, as the relevant statutes only authorized an executive director to be hired but did not create the position and such statutes did not specify duties to be exercised by the director. Op. Atty. Gen. dated March 10, 1988.

Due to the similarity to the situations in the above-referenced opinions and considering the factors discussed above, it is our opinion that one who would serve as Executive Director of the State Election Commission would most probably be considered an officer for dual office holding purposes. Thus, if he should serve simultaneously on the South Carolina Coastal Council, in our opinion the dual office holding prohibitions of the state Constitution would most probably be contravened.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/an

REVIEWED AND APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions