

The State of South Carolina



Office of the Attorney General

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June 11, 1992

The Honorable Robert G. Clawson
Post Office Box 789
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Dear Mr. Clawson:

By your letter of June 4, 1992, you requested the opinion of this Office as to whether certain members of the House of Representatives, employed by the Darlington County Board of Education and by the Florence-Darlington Technical Education College respectively, have contravened the dual office holding prohibitions of the State Constitution by virtue of their employment.

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, 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).

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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 appropriate house to actually determine that a member should be disqualified. We further note that neither of the members about whom you have inquired have been disqualified from service in the House of Representatives.

This Office has advised on numerous occasions that a member of the House of Representatives or the Senate would hold an office. See for examples, Ops. Atty. Gen. dated September 13, 1990; November 26, 1984; and July 8, 1985, among many others, as to the House of Representatives; and Ops. Atty. Gen. dated January 11, 1991; June 18, 1982; and April 3, 1979, among others, as to the Senate. It is then necessary to examine the other positions held by the legislators in question, to resolve your inquiry.

One of the Representatives is employed as a counselor in the Allied Health Division of the Florence-Darlington Technical Education College. This position is not created by statute; no qualifications or duties of the incumbent are specified in a statute. No oath is required of the incumbent. Employment is "at will" rather than for a specific term of years. The incumbent is compensated. The incumbent counsels admitted students or potential students in careers related to the Allied Health Division or in entrance requirements and sometimes counsels students in careers or requirements relative to other divisions of the College. These duties do not involve an exercise of a portion of the sovereign power of the State.

Considering all of the foregoing, it appears that one who is employed as a counselor in the Allied Health Division of the Florence-Darlington Technical Education College would be considered an employee rather than an officer for dual office holding purposes. Thus, that person could also serve in the House of Representatives without contravening the dual office holding proscription of Article III, Section 24, in our opinion. Of course, the House of Representatives is the ultimate judge of that question. See also Ops. Atty. Gen. dated November 26, 1984 (member of the House could serve as administrative assistant to the President of Horry-Georgetown Technical Education College) and March 21, 1980 (director of physical plant at Trident TEC could serve in the House).

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The other individual is employed as the District Vocational Job Placement Coordinator of the Darlington County schools, helping to place vocational and cooperative education students into jobs for which they have completed training. The position is not created by statute, nor does any statute specify qualifications or duties of the incumbent. No oath is required to be taken. Tenure is "at will" rather than for a term of years. Compensation is paid and is based on the teachers' pay scale. The duties exercised by the incumbent do not involve an exercise of a portion of the sovereign power of the State.

Based on the foregoing, it is the opinion of this Office that an individual employed as District Vocational Job Placement Coordinator of the Darlington County schools would be considered an employee rather than an officer for purposes of dual office holding. Therefore, that individual could serve in the House of Representatives concurrently without contravening the dual office holding proscription of Article III, Section 24. As stated earlier, however, the House of Representatives is the final judge of this question.

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

cc: The Honorable Maggie W. Glover
The Honorable Denny W. Neilson