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# The State of South Carolina



## Office of the Attorney General

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June 12, 1992

D. Kent Sharples, President  
Horry-Georgetown Technical College  
Post Office Box 1966  
Conway, South Carolina 29526-1966

Dear President Sharples:

By your letter of June 2, 1992, you have asked for our opinion on your retaining your state employment as President of Horry-Georgetown Technical College and serving in the House of Representatives simultaneously, dual office holding being one of your concerns.

Article III, Section 24 of the State Constitution provides the following:

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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Moreover, Article III, Section 11 provides that "Each house shall judge of the ... qualifications of its own members ... ." If a dual office holding problem or other question of a member's qualification should arise, resolution of the issue would be solely within the province of the particular house (here, the House of Representatives). Culbertson v. Blatt, 194 S.C. 105, 9 S.E.2d 218 (1940). Thus, this Office may only comment on your question, as the House of Representatives would be the entity to resolve the question if one should arise.

Clearly, a legislator holds an office within the purview of the state Constitution. See Ops. Atty. Gen. dated January 11, 1990; September 13, 1990; November 26, 1984; and many others. It must then be determined whether the position of President of Horry-Georgetown Technical College would be considered an office.

An examination of the statutes relative to Horry-Georgetown Technical College, S.C. Code Ann. § 59-53-810 et seq., reveals no statute which creates the position of President of the College. By § 59-53-830 (7), the College's governing board is authorized to "employ such personnel as may be necessary to enable the Commission to fulfill its functions." Apparently the position of President was thus created by the governing board. No statute specifies qualifications to be met, an oath to be taken, duties to be exercised, or a term of years to be served. Compensation, in the form of a salary, is paid to the incumbent. It is apparent that the individual employed as President of the College does not meet the criteria usually possessed by an office holder. Thus, it is our opinion that such would be a position of public employment rather than a public office.

Based on the foregoing, it is our opinion that as President of Horry-Georgetown Technical College, you could also serve in the House of Representatives without contravening the dual office holding prohibitions of the state Constitution. This opinion is consistent with a previous opinion of our Office dated November 26, 1975 (copy enclosed), concluding that the President of South Carolina State College would not be deemed an office holder, and with opinions dated November 26, 1984 (administrative assistant to college president not an office), March 21, 1980 (director of physical plant at technical college not an office), and June 11, 1992 (counselor at technical college not an office).

We have located no statute which prohibits the candidacy of a state or public employee for the House of Representatives. See Ops. Atty. Gen. dated November 26, 1984;

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August 6, 1984; and June 11, 1992, copies of which are enclosed. We advise that such employees consult their employers to be certain that the employer has no policy concerning political activity. We also caution that public employees whose positions may be connected to federal funds need to be aware of the federal Hatch Act; if such is the case, advice should be sought from the U.S. Merit Systems Protection Board in Washington, D.C. Finally, we caution public employees to be aware of the ethics laws and to refrain from using their public employment (i.e., telephones, copiers, and so forth) for their personal benefit.

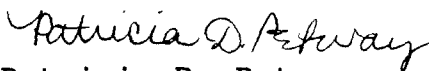
You may wish to contact the State Ethics Commission to obtain guidance on conducting your campaign and further guidance on avoiding ethical problems after election. The House Ethics Committee should also be consulted.

Financial arrangements as to public employees serving in the legislature are discussed in the enclosed opinion of November 26, 1984. We are aware of one state employee who works on a reduced schedule during the legislative session, whose salary is reduced accordingly. We understand that, if you are subject to annual leave regulations, you are limited to thirty (30) days of annual leave per year; thus, other arrangements must be made as to time away from employment. As noted in the opinion of November 26, 1984, the actual terms and conditions of employment must be determined between the College's governing board and you as its employee.

We hope that the foregoing will prove to be helpful. Please advise if we may be of additional assistance.

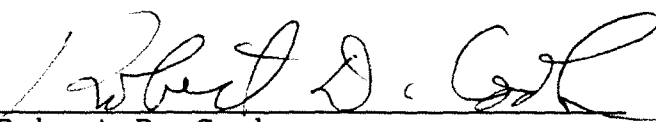
With kindest regards, I am

Sincerely,

  
Patricia D. Petway  
Assistant Attorney General

PDP/an  
Enclosures

REVIEWED AND APPROVED BY:

  
Robert D. Cook  
Executive Assistant for Opinions