

The State of South Carolina

4821
Library



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

May 6, 1992

The Honorable Michael T. Rose
Senator, District No. 38
606 Gressette Building
Columbia, South Carolina 29202

Dear Senator Rose:

You have advised that several residents of Dorchester County have questioned whether they may be holding dual offices in violation of the state Constitution's prohibitions against dual office holding. After a brief discussion of the principles of dual office holding, each of the circumstances as outlined in your letter will be addressed.

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).

1. Your first question is whether an individual may serve simultaneously as a member (and chairman) of the Dorchester County Election Commission and a member of the state Council on Vocational and Technical Education.

This Office has opined on numerous occasions that one who serves on a county election commission (whether member or chairman) would hold an office for dual office holding purposes. Enclosed is a copy of an opinion dated July 13, 1989, as representative of those numerous opinions.

The Honorable Michael T. Rose
Page 2
May 6, 1992

The state Council on Vocational and Technical Education was originally created by executive order of the governor in 1969. Known first as the Advisory Council on Vocational and Technical Education (until the name was changed by executive order in 1985), the entity was created as mandated by federal law, the Carl D. Perkins Vocational Education Act, P.L. 98-524, to permit the state to receive funds under that Act for vocational education. In addition, the Council is required to serve as the State Occupational Training Advisory Committee pursuant to the "South Carolina Employment Revitalization Act of 1986," S.C. Code Ann. § 59-54-10 et seq.

As noted in the 1989-90 Annual Report of the South Carolina Council on Technical and Vocational Education, in the Overview,

The Council does not conduct any educational programs or have any administrative authority over vocational or technical education programs. The efforts of the Council are directed primarily to evaluation, research, and the development of policy advice. The policy advice, in the form of recommendations, is submitted to the appropriate board or boards to improve the programs and the efficiency of occupational education in South Carolina.

A review of duties assigned to the Council in that capacity reveals that the duties are advisory or recommendatory in nature, § 59-54-20; or are assessments or progress reports of area occupational advisory committees, § 59-54-30. Statutory duties under state law are somewhat limited and appear to be in the nature of providing advice or recommendations to decision-makers rather than making and carrying out decisions themselves. It is likely that these council members would not be viewed as actually exercising a portion of the sovereign power of the state.

A review of the Perkins Act, particularly as codified at 20 U.S.C. § 2322 (P.L. 98-524, § 112), shows that a state desiring to receive federal funds under that Act must establish a council on vocational education, to be comprised of thirteen members, appointed by the governor, who meet the specified qualifications or criteria. The federal law does not require an oath, specify tenure, or provide for compensation of council members. Duties to be exercised by state councils are specified in 20 U.S.C. § 2322(d) and are of the nature of analysis, advising various entities, and making recommendations concerning vocational education.

The Honorable Michael T. Rose

Page 3

May 6, 1992

In an opinion of this Office dated November 20, 1975 as to a similar entity required by federal law to be established to enable the state to receive federal funds (Developmental Disabilities Council), this Office stated the previous opinion of the Office to have been that a member of an organization created by executive order would not be considered an officer unless there is state statutory or constitutional authority for such action by the governor. Here, there is no such state authority. The statutes adding duties to be exercised by council members do not affect the federal laws as to appointment or the governor's role and only add to duties which are advisory in nature already.

Based on the foregoing, it is our opinion that a member of the state Council on Vocational and Technical Education is most probably not an office for dual office holding purposes. Thus, a member of the Council could also serve on a county election commission without running afoul of the dual office holding prohibitions of the state Constitution.

2. Your second question is whether an individual may serve simultaneously on the Dorchester County Election Commission and as chairman or a member of the Dorchester County Commission on Alcohol and Drug Abuse. Membership on a county election commission is considered to be an office, as noted in response to your first question.

The Dorchester County Commission on Alcohol and Drug Abuse, created initially by Act No. 640 of 1973, was re-created by ordinance number 79-18, of Dorchester County Council, effective January 1, 1980. The Commission is composed of seven county residents, one each from county council districts, appointed by county council. Terms of four years, and until the successors are appointed and qualify, are specified. No compensation is to be paid to members. No oath is required of members by the ordinance. Powers and duties are listed in § 2 of the ordinance (which is entitled "Officer") and include acquisition of land or interest thereon, studying the county's alcohol and drug abuse needs and devising a plan to meet those needs, cooperating with the state in implementing state plans for the control of alcohol and drug abuse, employing personnel, and others. These duties appear to involve an exercise of sovereign power.

This Office has opined that members of similar entities in other counties would be considered office-holders. See Ops. Atty. Gen. dated August 6, 1991 (Allendale-Hampton-Jasper); February 13, 1984 (Cherokee); March 6, 1989 (Charleston); and December 10, 1991 (Lexington-Richland). We can discern no reason to reach a different conclusion as to the Dorchester County commission.

The Honorable Michael T. Rose
Page 4
May 6, 1992

Based on the foregoing, it is the opinion of this Office that one who would serve simultaneously on the Dorchester County Election Commission and on the Dorchester County Commission on Alcohol and Drug Abuse would most probably hold dual offices, in contravention of the state Constitution.

3. You finally ask whether an individual might serve concurrently as a member of the Dorchester County Voter Registration Board, the Berkeley-Charleston-Dorchester Council of Governments, and the Dorchester County Economic Development Board without running afoul of the dual office holding prohibitions of the state Constitution.

This Office has advised on numerous occasions that one who serves on a county voter registration board would hold an office for dual office holding purposes. As representative of those numerous opinions, enclosed is a copy of an opinion dated June 19, 1987.

Membership on a council of governments, as to elected or appointed officials or employees, is not deemed to be an office, by virtue of express exemption of the state Constitution. See Art. VIII, § 13 and Art. VII, § 15 of the state Constitution; also Ops. Atty. Gen. dated February 7, 1984 and November 4, 1991 (copies enclosed).

We have been provided a copy of ordinance number 79-23 of Dorchester County Council, effective January 1, 1980, creating the Dorchester County Industrial Planning Board; we must assume, for purposes of this opinion, that this is the entity referred to as the Dorchester County Economic Development Board in your letter.

The Dorchester County Industrial Planning Board is composed of seven members, one from each of the county council districts, appointed by county council. Terms of four years, and until successors have been appointed and qualified, are specified. No compensation is to be paid to members. No oath is required by the ordinance. The Board is to, by § 2 of the ordinance,

encourage the location of industry and the tourist trade and the promotion of adequate market for the products grown by the farmers of Dorchester County through the institution of an advertising program, through cooperative efforts with municipalities of the County and organizations having similar aims, and

The Honorable Michael T. Rose
Page 5
May 6, 1992

through such other activities as will
tend to accomplish the purposes of the
Board.

Section 4 of the ordinance permits the Board to accept gifts and grants of money from various sources "to be used in the promotion of its programs." On the face of the ordinance, it does not appear that the Board, through its members, is exercising a portion of the sovereign power of the State.

This Office has examined a number of economic or industrial development boards across the state in terms of dual office holding. Of those, the Dorchester County Board most closely resembles those in Dillon (August 9, 1991), Florence (April 5, 1990), Hampton (July 27, 1989), and Kershaw (October 18, 1988) counties, all of which were concluded not be offices (though in some cases, a close question was noted and resolved in favor of not an office). Thus, it is our opinion that a member of the Dorchester County Industrial Planning Board would most probably not hold an office for dual office holding purposes.

Based on the foregoing, it is our opinion that one individual could most probably serve concurrently on the Dorchester County Voter Registration Board, the Berkeley-Charleston-Dorchester Council of Governments, and the Dorchester County Industrial Planning Board without contravening 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:ss
Enclosures

REVIEWED AND APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions