

The State of South Carolina



Office of the Attorney General

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December 17, 1990

The Honorable Dick Elliott
Vice Chairman
Horry County Legislative Delegation
Horry County Courthouse
1300 Block - Third Avenue
Conway, South Carolina 29526

Dear Representative Elliott:

By your request faxed to our Office on December 13, 1990, you have inquired as to whether an individual may serve simultaneously as a member of the Horry County Soil and Water Conservation Commission and as a member of the Loris Community Hospital Board 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 advised that service on the Horry County Soil and Water Conservation Commission would constitute an office for dual office holding purposes by an opinion dated June 24, 1982. A copy is enclosed herewith.

This Office examined the status and purpose of the Loris Community Hospital District in Op. Atty. Gen. No. 85-49, dated May 9, 1985, a copy of which is enclosed. Therein, we concluded that the

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District appeared to be a special purpose or public service district and a political subdivision of the State. Act No. 599 of 1984, amending Act No. 742 of 1946, provides that the District is to be governed by a commission of seven members to be appointed by the Governor upon the recommendation of a majority of the Horry County Legislative Delegation. Members serve six-year terms and until their successors are appointed and qualify. Residency in one of the townships of the county which constitute the District is required of members. No oath is required of members. Compensation is not addressed in either of the acts relative to the District.

Section 3 of Act No. 742 of 1946 specifies the duties and powers of the District's board, which generally includes "all matters necessary or convenient for the establishment and maintenance of a hospital for said District." Employment of personnel, establishing rates and regulations, provision of hospital services for destitute residents of the District, and issuance of bonds are among the powers and duties in Act No. 742 of 1946, as discussed more fully in Op. Atty. Gen. No. 85-49. These powers and duties appear to involve an exercise of a portion of the sovereign power of the State.

Considering the foregoing factors, it appears that one who serves on the Loris Community Hospital Board would most probably hold an office for dual office holding purposes. Thus, one who would serve simultaneously on the Horry County Soil and Water Conservation Commission and on the Loris Community Hospital Board would most likely contravene 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/an
Enclosures

REVIEWED AND APPROVED BY:

Robert D. Cook

Robert D. Cook
Executive Assistant for Opinions