

The State of South Carolina



Office of the Attorney General

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December 11, 1990

The Honorable Cartha D. DeLoach
Chairman, Public Service Commission
Merit Selection Panel
Post Office Box 12444
Columbia, South Carolina 29211

Dear Mr. DeLoach:

Thank you for your letter of October 24, 1990, to Attorney General Medlock, which he has referred to the Opinion Section for response. You had inquired as to whether potential service on the Public Service Commission by individuals who currently hold other public positions might result in dual office holding, in contravention of the state Constitution. In checking our files, we determined that we had prior opinions on each of the positions named in your letter. Copies of the opinions listed below are enclosed.

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).

Public Service Commission: Opinions dated September 12, 1990 and June 22, 1982, concluded that one serving on the Public Service Commission would hold an office for dual office holding purposes.

School boards: Opinions dated July 20, 1976; March 16, 1989; and October 19, 1990 conclude that such service would constitute holding a public office.

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County council: Opinions dated July 20, 1976; February 13, 1976; July 18, 1989; and March 19, 1990 conclude that such service constitutes holding a public office.

Sheriff: Opinions dated January 11, 1985 and June 28, 1985 conclude that a sheriff holds a public office.

School principal: An opinion of this Office dated February 13, 1976 concludes that a school principal does not hold an office. An opinion dated July 20, 1976 considers a principal to be an employee.

Conclusion: Simultaneous service on the Public Service Commission by a member of a county council or school board or a sheriff would most probably run afoul of the dual office holding prohibitions of the state Constitution. Service on the Public Service Commission by a public school principal would most likely not create a dual office holding situation.

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