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# The State of South Carolina



## Office of the Attorney General

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January 23, 1989

The Honorable Joyce C. Hearn  
Member, House of Representatives  
503-B Blatt Building  
Columbia, South Carolina 29211

Dear Representative Hearn:

You have asked whether one individual may serve concurrently on a county planning commission and as a member of the state's Procurement Review Panel without running afoul of the dual office holding prohibitions of the State Constitution. While the question is extremely close, we would resolve the doubt in determining that no dual office holding would occur in this instance.

Article XVII, Section 1A of the South Carolina Constitution provides that "...no person shall hold two offices of honor or profit at the same time." 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 has consistently opined that a member of a county planning commission would hold an office for dual office holding purposes. Ops. Atty. Gen. dated October 7, 1987 (Laurens County Planning Commission); December 6, 1985 (Aiken County); April 28, 1982 (Beaufort County); December 31, 1980 (Charleston County); January 31, 1984 (Florence County); June 24, 1982 (Horry County); and February 15, 1984 (Lexington County), among others. Thus, the planning commission members in other counties, including Richland County, would be considered office holders for dual office holding purposes.

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This Office has apparently never considered previously whether a member of the Procurement Review Panel would hold an office. The Panel was created pursuant to Section 11-35-4410 of the Code of Laws of South Carolina (1976, as revised). Membership is specified, to some extent, by the statute, to include certain legislators, a member of the Budget and Control Board, and five gubernatorial appointees. While the gubernatorial appointees are to be representative of various professions, no further qualifications are specified. Neither tenure nor an oath are provided for by the statute. No salary is to be paid, but the statute does provide for payment of per diem, mileage, and subsistence as provided by law for members of state boards and commissions.

By the terms of Section 11-35-4410(5), the Panel is authorized to interview any person it deems necessary, to review various written procurement decisions, establish its own rules of procedure, and hold necessary hearings. In addition, Section 11-35-4410(6) authorizes the Panel to conduct an administrative review and report its findings to the specified involved parties. See also Ex Parte South Carolina Division of General Services, 283 S.C. 555, 325 S.E.2d 319 (1984).

While the members of the Procurement Review Panel do meet a number of the criteria used in determining whether a particular position is an office for dual office holding purposes, it is an extremely close question as to whether sufficient criteria are met to make membership on the Panel an office. In our view, however, a gubernatorial appointee serving on the Procurement Review Panel could most probably serve on a county planning commission 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:sds

REVIEWED AND APPROVED BY:

*Robert D. Cook*

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