

# The State of South Carolina



## Office of the Attorney General

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September 21, 1989

The Honorable Lynn H. Youmans, Jr.  
Mayor, Town of Furman  
Box 54  
Furman, South Carolina 29921

Dear Mayor Youmans:

By your letter of September 5, 1989, you have asked whether an individual may serve simultaneously as the mayor of a town and also on the South Carolina Water Resources Commission representing the agricultural interest without running afoul of the dual office 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 has concluded on numerous occasions that one who serves as a mayor of a municipality would hold an office for dual office holding purposes. See, for examples, opinions dated November 6, 1987 (copy enclosed); January 17, 1983; March 31, 1987; September 29, 1983; and September 15, 1983, among many others.

We have apparently never opined as to membership on the South Carolina Water Resources Commission previously, so this is a question of first impression. The Commission was established pursuant

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to Section 49-3-20 et seq. of the Code of Laws of South Carolina (1976, as revised). Of the eighteen members of the Commission, ten are appointed by the Governor and eight serve *ex officio*. Of the ten gubernatorial appointees, three represent the interest of agriculture, three represent the interest of industry, three represent the interest of municipalities, and one represents saltwater interests.<sup>1/</sup> Terms of the gubernatorial appointees are for three years.

By Section 49-3-20(c), members are to receive no salary for the performance of their duties, but they are entitled to such *per diem*, subsistence, and mileage as is authorized for members of state boards and commissions. No oath is apparently required by these statutes. Powers and duties of the Commission are specified in statutes such as Sections 49-3-30, 49-3-40, 49-4-20, 49-5-40, 49-5-50, 49-5-60, 49-5-90, 49-5-100, and 49-5-110, among others. The Commission may adopt rules and regulations, conduct investigations, grant water use permits, issue subpoenas, hold hearings, employ an executive director, assist in formulating policy, conduct studies, make recommendations concerning water use, and undertake many other activities. There is no question that these duties involve an exercise of a portion of the sovereign power of the State.

Based on the foregoing, it must be concluded that one who serves on the South Carolina Water Resources Commission would most probably hold an office for dual office holding purposes. Thus, one who would serve concurrently as a mayor and as a member of the Commission would most probably be in contravention of the dual office holding prohibitions of the State Constitution. Enclosed is a prior opinion of this Office dated February 10, 1984 which discusses how dual office holding works and how the law operates to cure a dual office holding situation.

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<sup>1/</sup> *Ex officio* members, whose terms are coterminous with the term which the members serve in their employment or appointment capacities, include the heads of: Department of Agriculture; South Carolina Department of Health and Environmental Control; South Carolina Wildlife and Marine Resources Commission; State Forestry Commission; State Land Resources Conservation Commission; State Development Board; Clemson University Water Resources Research Institute; and State Highway Department.

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We trust that the foregoing has satisfactorily responded to your inquiry. If we may provide additional assistance, please do not hesitate to let us know. With kindest regards, I am

Sincerely,

*Patricia D. Petway*

Patricia D. Petway  
Assistant Attorney General

PDP/nnw  
Enclosures

REVIEWED AND APPROVED BY:

*Robert D. Cook*

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Robert D. Cook  
Executive Assistant for Opinions