

# The State of South Carolina



Office of the Attorney General

Opinion No. 88-50  
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June 6, 1988

Cary D. Chamblee  
Deputy Director  
Land Resources Conservation  
Commission  
2221 Devine Street, Suite 222  
Columbia, South Carolina 29205

Dear Mr. Chamblee:

By your letter of May 25, 1988, you have asked for the opinion of this Office as to whether one who would serve on the Soil Classifiers Advisory Council would hold an office for dual office holding purposes.

Article XVII, § 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).

The Soil Classifiers Advisory Council is appointed by the South Carolina Land Resources Conservation Commission following its mandate in Section 40-65-20, Code of Laws of South Carolina (1976):

The Board shall appoint an advisory council

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of five qualified professional soil classifiers who shall have the qualifications required in § 40-65-30 to recommend certification of those eligible to become registered soil classifiers. One of these five persons shall be the chief soil scientist of the Board. The other four members of the advisory council shall be appointed for five years and until their successors have been appointed and qualify, ... .

Qualifications of advisory council members are specified by Section 40-65-30 and require a member to be a "professional soil classifier who has been actively engaged in the practice of professional soil classifying for a period of at least ten years and who shall have been in responsible charge of soil classification for at least six years."

Compensation of advisory council members is to be twenty-five (\$25.00) dollars for each day actually engaged in service to the Land Resources Conservation Commission, as well as reimbursement of actual travel, incidental, and clerical expenses incurred in their work.

Other statutes provide for filling vacancies on the advisory council (Section 40-65-50) and for meetings and such administrative details as officers and a quorum (Section 40-65-60). No oath is required of members by the relevant statutes in Chapter 65 of Title 40 of the Code.

As noted, Section 40-65-20 of the Code directs the advisory council members to recommend to the Commission those applicants who are eligible to become registered soil classifiers. The Commission, in R.116-1, has further defined the duties of the advisory council members to include carrying out administrative duties, administering examinations, making recommendations on applications, recommending policies to the Commission and effectuating those policies approved by the Commission, and serving as liaison between the Commission and registered soil classifiers. Regulations 116-2 as to registration, 116-3 as to examinations, 116-7 as to declaratory rulings, and 116-8 pertaining to rules also contain duties for advisory council members. These duties appear to involve an exercise of sovereign power.

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Because a member of the Soil Classifiers Advisory Council meets all of the usual criteria usually considered in determining whether a position would be an office for dual office holding purposes, except for requirement of an oath (which would itself be required by Article VI, Section 5 of the State Constitution), it is the opinion of this Office that a member of this body would most probably be considered an officer for dual office holding purposes.

With kindest regards, I am

Sincerely,

*Patricia D. Petway*  
Patricia D. Petway  
Assistant Attorney General

PDP:sds

REVIEWED AND APPROVED BY:

  
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