

## The State of South Carolina



## Office of the Attorney General

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ATTORNEY GENERAL

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September 14, 1987

Mr. C. Somers Miller  
104 Spanish Point Drive  
Beaufort, South Carolina 29902

Dear Mr. Miller:

By your letter of September 6, 1987, you have asked whether you may serve concurrently on the Beaufort County Election Commission and on the steering committee for fiscal autonomy for the Beaufort County schools without running afoul of the dual office holding prohibitions of the State Constitution.

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).

This Office has advised on numerous occasions that one who serves on a county election commission would hold an office for dual office holding purposes. As representative of the numerous opinions on the subject, enclosed please find Ops. Atty. Gen. dated September 24, 1982 and January 24, 1984.

You have advised that the steering committee will serve as an advisory group to the Beaufort County School Board in an upcoming referendum in November to determine whether or not the school board should be fiscally autonomous. The committee was not created by statute or ordinance; no duties or qualifications for service thereon are specified by statute or ordinance. Service on the committee is at the will of the School Board. No oath is required, and no salary is to be paid for service on the

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committee. The advisory nature of the committee makes an exercise of the sovereign power doubtful. Thus, the attributes usually found in a public officer are lacking in this instance.

It is the opinion of this Office that one who serves on the steering committee so described would not be considered a public officer; one who would serve on the steering committee and on the Beaufort County Election Commission would not contravene the dual office holding prohibitions of the State Constitution.

You have advised that you have consulted the State Ethics Commission about your potential conflict of interest; you further advised that you "will have to remain inactive throughout the election [as a member of the Election Commission]," if you are to serve on the steering committee. In this regard, I am enclosing Op. Atty. Gen. dated September 4, 1979, as to involvement of various election officials in various aspects of the election process.

With kindest regards, I am

Sincerely,

*Patricia D. Petway*

Patricia D. Petway  
Assistant Attorney General

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Enclosures

REVIEWED AND APPROVED BY:

*Robert D. Cook*

Robert D. Cook  
Executive Assistant for Opinions