

The State of South Carolina



Office of the Attorney General

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November 18, 1987

The Honorable H. Howell Clyborne, Jr.
Member, House of Representatives
Post Office Box 93
Taylors, South Carolina 29687

Dear Representative Clyborne:

You have advised that one of your constituents who presently serves on the Old Exchange Building Commission has been selected for membership on the governing body of the Parker Sewer and Fire District. You have asked whether your constituent's simultaneous service in both capacities would run 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 opined in an opinion dated November 29, 1976 (copy enclosed) that one who serves on the Old Exchange Building Commission would hold an office for dual office holding purposes.

The Parker Sewer and Fire District was created pursuant to Act No. 996 of 1930 and was originally known as Parker Water and Sewer Sub-District of the Greater Greenville Sewer District. See, Floyd v. Parker Water and Sewer Sub-District, 203 S.C. 276, 17 S.E.2d 223 (1941) for a history of the District. The name of the District was changed to its present name by Act No. 1837 of 1972. The Supreme Court in Floyd v. Parker Water and Sewer Sub-District, supra, has called the District "an arm of government created by the legislature for a specific public purpose.... ." Id., 203 S.C. at 285. Duties of the commission-

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ers are found in Act No. 443 of 1929 and include such powers and duties as entering into contracts, eminent domain, operating and maintaining a sewer system, issuance of bonds, and so forth. This Office has concluded on numerous occasions that service on the commissions of similar bodies would constitute an office for dual office holding purposes. Ops. Atty. Gen. dated August 4, 1982 (Georgetown Water and Sewer District); August 5, 1981 (Liberty-Chesnee-Fingerville Water Commission); and January 3, 1978 (Grand Strand Water and Sewage Commission). Based on prior opinions concerning similar bodies and the reasoning of the Supreme Court in Floyd v. Parker Water and Sewer Sub-District, supra, one serving on the District commission would exercise sovereign or governmental authority and would thus hold an office for dual office holding purposes.

It is therefore the opinion of this Office that one who would serve simultaneously on the Old Exchange Building Commission and on the commission or board of the Parker Sewer and Fire District would most probably contravene 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/rhm

Enclosure

REVIEWED AND APPROVED BY:

Robert D. Cook

Robert D. Cook
Executive Assistant for Opinions