

The State of South Carolina



Office of the Attorney General

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April 4, 1985

Thomas M. McDaniel, President
South Carolina State Board
of Funeral Service
P. O. Box 201
Clover, South Carolina 29710

Dear Mr. McDaniel:

In a letter to this Office you indicated that Mr. Avory Bland, Jr. will become Executive Secretary of the State Board of Funeral Service on June 30, 1985. You stated that this is a part-time state job and that Mr. Bland will not have any voting authority as to matters presented to the Board.

You also stated that Mr. Bland is currently Vice-President of the South Carolina Funeral Directors Association. He is to become President of the Association next year. Referencing the above, you have questioned whether Mr. Bland's holding the above positions with the State Board of Funeral Service and the South Carolina Funeral Directors Association would constitute dual office holding so as to be prohibited.

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).

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In the opinion of this Office, neither of the above the above referenced positions constitute an office for dual office holding purposes. While this Office has determined in an opinion dated June 13, 1980 that, a member of the State Board of Funeral Services is an officer for dual office holding purposes, based upon a review of a Section 40-19-70 of the 1976 Code of Laws which establishes the position of Executive Secretary of the Board, such position would not constitute an office for dual office holding purposes. The following from Sanders v. Belue is especially pertinent:

"(o)ne who merely performs the duties required of him by persons employing him under an express contract or otherwise, though such persons be themselves public officers, and though the employment be in or about a public work or business, is a mere employee. See also: Op. Atty. Gen. dated January 11, 1985; Op. Atty. Gen. dated January 17, 1975.

As indicated by you, the South Carolina Funeral Directors Association is a private professional organization. Based upon the definition of an office as referenced above in Sanders v. Belue and State v. Crenshaw, an individual holding an office with such private organization would not hold an office for dual office holding purposes.

If there is anything further, please advise.

Sincerely,



Charles H. Richardson
Assistant Attorney General

CHR/an

REVIEWED AND APPROVED BY: _____



Robert D. Cook
Executive Assistant for Opinions