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February 1988

# The State of South Carolina



## Office of the Attorney General

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August 21, 1985

Mr. Steve Marlowe  
Post Office Box 1605  
Beaufort, South Carolina 29902

Dear Mr. Marlowe:

You have advised this Office that you presently hold the position of Business and Industry Coordinator at the Beaufort-Jasper Career Education Center. You have asked whether you may be eligible to run for the Beaufort County Board of Education or Beaufort County Council. It is assumed that you are concerned about the dual office holding prohibitions found in the Constitution of the State of South Carolina.

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 opined on numerous occasions that one who serves on a county school board or as a member of a county council would hold an office for dual office holding purposes. See, for example Ops. Atty. Gen. dated July 8, 1983 (school board) and January 31, 1985 (county council), copies of which are enclosed.

You are presently employed as the Business and Industry Coordinator of the Beaufort-Jasper Career Education Center, which Center was established pursuant to Section 59-53-1900,

REQUEST LETTER

Continuation Sheet Number 2  
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Code of Laws of South Carolina (1976 & 1984 Cum. Supp.). 1/ You are salaried and are employed "at will" instead of for a specific term of years. No oath was required prior to your assumption of duties. The duties and qualifications for your position were not specified by statute, ordinance, or resolution as far as this Office can determine. The duties of the position generally include assisting instructors, evaluating training and other programs, providing various training programs, and other similar duties in the context of vocational education. None of these duties appear to involve an exercise of a portion of the sovereign power of the State.

Considering all of the above, the following from Sanders v. Belue, supra, is particularly appropriate:

[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.

78 S.C. at 174. Thus, we would conclude that the position of Business and Industry Coordinator of the Beaufort-Jasper Career Education Center would be employment rather than an office.

Thus, if you were to serve in the position in which you are currently employed, the dual office prohibitions of the State Constitution would not be contravened if you should serve on the Beaufort County Board of Education or County Council. However, there are other concerns which must be addressed.

Section 59-15-10 of the Code, providing for membership on county boards of education, states that "[n]o employee of a public school system other than the county superintendent of education shall be eligible to serve as a member of a county board of education." We note that you are employed by the governing board of the career education center pursuant to Section 59-53-1920 (12). However, the career education center does not "constitute a separate school district but [is] a joint

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1/ Enclosed are current statutes covering the establishment of vocational education centers, Section 59-53-1900 et seq. These statutes have been amended or added to several times since H.2922 of 1975, enclosed with your inquiry, was read the first time.

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project for the establishment of a vocational school by the cooperating school districts. ..." Section 59-53-1910. The ties of the Beaufort-Jasper Career Education Center to the Beaufort County Board of Education are numerous by statute, and the Center must be viewed as a part of the school system of Beaufort County. See Sections 59-53-1880, -1890, -1900, -1910; also Op. Atty. Gen. dated September 26, 1977, enclosed. Thus, Section 59-15-10 of the Code would appear to preclude your service on the Beaufort County Board of Education while you are employed by the Center.

Because there may be fiscal ties between the Center (via the Board of Education) and Beaufort County Council, you should be aware of the State Ethics Act should you serve on council while you are employed at the Center. Section 8-3-410 of the Code, a part of the Ethics Act, provides in part (1) that "[n]o public official or public employee shall use his official position or office to obtain financial gain for himself." If there are fiscal ties (i.e., if council sets the millage for the school board), 2/ your vote as a member of council could possibly be viewed as using your position on council for financial gain through your employment at the Center. The steps to be taken to avoid an ethics problem are specified by Section 8-13-460 of the Code:

Any public official...who, in the discharge of his official duties, would be required to take action or make a decision which would substantially affect directly his personal financial interest...shall instead take the following actions:

(a) Prepare a written statement describing the matter requiring action or decisions, and the nature of his potential conflict of interest with respect to such action or decision.

\* \* \*

(c) ... If the public official is a member of the governing body of any...county,

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2/ This Office expresses no opinion herein as to which body may possess authority as to adoption of the millage or budget or levying taxes for the Beaufort County Board of Education.

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...he shall furnish a copy to the presiding officer and to the members of that governing body, who shall cause such statement to be printed in the minutes and shall require that the member be excused from any votes, deliberations, and other actions on the matter on which the potential conflict of interest exists, and shall cause such disqualification and the reasons therefor to be noted in the minutes.

If you should be elected to Beaufort County Council, you should follow the guidelines specified in the Ethics Act to avoid any appearance of impropriety while you are employed at the Center. You may wish to consult the State Ethics Commission for further advice or information; the Commission may be reached by calling 758-7408 or by writing to Gary R. Baker, Executive Director, SCN Center, Suite 930, 1122 Lady Street, Columbia 29201.

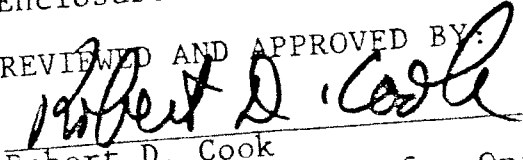
It may be wise, as a precaution, to check with the United States Merit Systems Protection Board to determine whether the Hatch Act may be violated if your service on county council would be the result of a partisan election, if there is federal funding of the Center, your position, or some other relationship to any federal funds received by the Board of Education. That agency may be contacted by writing Office of the Special Counsel, U.S. Merit Systems Protection Board, 1120 Vermont Avenue NW, Washington, DC 20419; telephone, (202) 653-7188.

We trust that the foregoing has satisfactorily responded to your inquiry. Please advise if additional information or clarification should be needed.

Sincerely,

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

PDP:hcs  
Enclosures

REVIEWED AND APPROVED BY:  
  
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