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The State of South Carolina



Office of the Attorney General

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February 1, 1985

The Honorable H. E. Pearce, Jr.
Member, House of Representatives
422 A Blatt Building
Columbia, South Carolina 29211

Dear Representative Pearce:

By your letter of January 14, 1985, you have asked this Office whether it would be legal and proper for one individual to serve concurrently as a member of the Horry-Georgetown Commission for Technical Education and as a full-time employee of Horry County as purchasing director.

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).

Membership on the Horry-Georgetown Commission for Technical Education is provided for by Section 59-53-810, Code of Laws of South Carolina (1976). Tenure for Commission members is three years. Powers and duties of the Commission are mandated particularly by Sections 29-53-820 and -830 of the Code and by other statutes. Other than residence in either Horry or Georgetown counties, no qualifications are specified. There is no provision for an oath or salary for Commission members. Commission members are empowered to, inter alia, create, maintain, and operate a technical education

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center; to promulgate and enforce rules and regulations for the operation of its facilities; and to expend all funds received from various federal, state, and local sources, all involving an exercise of a portion of the sovereign power of the State. As this Office has concluded in opinions dated April 19, 1983 and December 10, 1981 (enclosed) on other TEC Commissions, a member of the Horry-Georgetown Commission for Technical Education would most probably hold an office.

The position of purchasing director of Horry County was not created by statute or ordinance. Tenure of one holding the position would be by contract or at will, rather than for a specified term of years. One holding the position is compensated, though the amount is negotiated and not specified by statute or ordinance. No oath is required to be taken to hold the position. Qualifications for the position (education and experience) and functions are specified in a job description, which is not an ordinance; functions include "planning, organizing, coordinating and evaluating personnel and purchasing services." The purchasing director is supervised by the county administrator. Considering all factors, the purchasing director of Horry County would most probably be an employee of Horry County rather than an officer. The following from Sanders v. Belue is thus relevant:

[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.

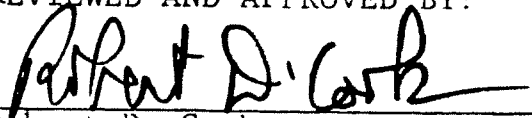
In conclusion, one who would serve concurrently as the purchasing director of Horry County and as a member of the Horry-Georgetown Commission for Technical Education would most probably not violate the dual office holding prohibitions of the State Constitution.

Sincerely,

Patricia D. Petway
Patricia D. Petway
Assistant Attorney General

PDP:ymk
Enclosures

REVIEWED AND APPROVED BY:


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Executive Assistant for Opinions