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January 1100

The State of South Carolina



Opinion No 85-11  
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Office of the Attorney General

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February 6, 1985

The Honorable Ramon Schwartz, Jr.  
Speaker of The House of Representatives  
State of South Carolina  
Post Office Box 11857  
Columbia, South Carolina 29211

Dear Mr. Speaker:

By your letter of February 1, 1985, you have asked whether an individual presently serving on the Wateree District Advisory Board of Health would be required to resign from that Board if the individual should be appointed to serve on the Sumter County Election Commission. In effect, you are asking whether such concurrent service by one individual would be prohibited by the dual office holding provisions 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).

As you are already aware, this Office has advised on numerous occasions that one who would serve on a county election commission would be considered an officer for dual office holding purposes. See, for example, Ops. Atty. Gen. dated September 24, 1982 and January 24, 1984, copies of which are enclosed.

This Office has apparently not considered whether a member of a county advisory board of health would be an officer for dual office holding purposes. Such advisory boards, including

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the Wateree District Advisory Board, have been established pursuant to Section 44-1-130, Code of Laws of South Carolina (1976). That statute provides in part:

The number of members of a district advisory board shall be determined by the Department [of Health and Environmental Control] with due consideration to the population and community needs of the district. District advisory boards of health shall be subject to the supervisory and advisory control of the Department. District advisory boards are charged with the duty of advising the district medical director or administrator in all matters of sanitary interest and scientific importance bearing upon the protection of the public health.

The advisory boards have been created by statute; however, there are no provisions for a specific tenure, compensation, an oath, or qualifications. Furthermore, the duties are merely advisory and do not appear to involve an exercise of a portion of the sovereign power of the state. Thus, one who would serve on the Wateree District Advisory Board of Health would not be considered an officer for dual office holding purposes.

In conclusion, because the concurrent service on a county election commission and a district advisory board of health would not constitute dual office holding, one presently serving on the Wateree District Advisory Board of Health would not be required to resign from that Board if he should be appointed to serve on the Sumter County Election Commission.

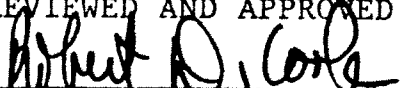
Sincerely,

*Patricia D. Petway*

Patricia D. Petway  
Assistant Attorney General

PDP:djg  
Enclosures

REVIEWED AND APPROVED BY:

  
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Executive Assistant for Opinions