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summary

The State of South Carolina



Office of the Attorney General

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January 31, 1985

Mr. Claude Driggers
Marlboro County Supervisor
Post Office Box 419
Bennettsville, South Carolina 29512

Dear Mr. Driggers:

By your letter of November 30, 1984, you have asked whether one person serving simultaneously on the Marlboro County Council and on the Marlboro County Development Board would contravene the dual office holding provisions of 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).

The Marlboro County Industrial and Agricultural Development Board, established by Act No. 280, 1957 Acts and Joint Resolutions, was replaced in 1979 by action of the Marlboro County Council. A search committee formed by council in 1979 to hire a development director for the county then became the Marlboro County Economic and Industrial Development Board. There is some question as to whether the Board was created by an ordinance. Members serve at the pleasure of council. There are no provisions for an oath, salary, or qualifications. While the Board works with the development director generally, the Board has no specified duties. Whether sovereign power is exercised is questionable. It would appear that members of the Board do not meet the criteria specified in Sanders v. Belue, supra, and State v. Crenshaw, supra; thus such members would most probably not be officers for purposes of dual office holding.

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This Office has concluded on numerous occasions that a member of a county council would hold an office for dual office holding purposes. See Ops. Atty. Gen. dated December 20, 1983 and November 15, 1983, copies of which are enclosed.

In conclusion, one who would serve in both positions simultaneously would most probably not contravene the dual office holding provisions of the State Constitution. However, public policy would preclude one serving on an appointive body (Marlboro County Council) from serving on a board or commission (Development Board) over which the first body has appointive power, unless such appointment is ex officio.

Because service on the Development Board would most probably not be considered office-holding, the problem of dual office holding does not arise. The actual problem arises in this instance because the individual is a member of the public body which makes appointments to the Development Board. Appointment by the public body of one of its own to a second board is prohibited. As the South Carolina Supreme Court stated in Bradley v. City Council of Greenville, 212 S.C. 389, 46 S.E.2d 291 (1948):

In the absence of constitutional or statutory provision it is ... "contrary to public policy to permit an officer having an appointing power to use such power as a means of conferring an office upon himself, or to permit an appointing body to appoint one of its members."

212 S.C. at 397. Even though membership on the Development Board would most probably not be an office, this public policy would nevertheless be applicable, unless council appointed one of its members to serve as an ex officio member of the Development Board. Whether authorization for ex officio membership on the Development Board exists is unknown to this Office.

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP:ymk
Enclosures

REVIEWED AND APPROVED BY:

Robert D. Cook

Robert D. Cook
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