

January 1985

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:

You have asked this Office for an opinion on whether a person who would serve simultaneously on the Marlboro County Development Board and on the Technical College Board would contravene 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).

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

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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.

It is assumed from your inquiry that the individual in question serves on the Chesterfield-Marlboro Area Technical Education Center Commission, the governing body of the Chesterfield-Marlboro Technical Education College, established pursuant to Section 59-53-510, Code of Laws of South Carolina (1983 Cum. Supp.). Members other than those serving ex officio 1/ are appointed by the Governor for three-year terms. Powers and duties of the Commission are specified in Section 59-53-530 of the Code. Since education and administration of education are traditional sovereign powers, a member of the Commission would appear to exercise a portion of the sovereign power of the State. Thus, a Commission member would most probably hold an office for dual office holding purposes.

In conclusion, one who would serve simultaneously on the Marlboro County Development Board and on the Chesterfield-Marlboro Area Technical Education Center Commission would most probably not contravene the dual office holding prohibition of the State Constitution.

Sincerely,

Patricia D. Petway
Patricia D. Petway
Assistant Attorney General

PDP:ymk

REVIEWED AND APPROVED BY:

Robert D. Cook

Robert D. Cook
Executive Assistant for Opinions

1/ The superintendents of education from Chesterfield and Marlboro counties serve as ex officio members of the Commission. For purposes of this opinion it is assumed that you are not referring to ex officio members, who would not violate the dual office holding prohibition by so serving. Ashmore v. Greater Greenville Sewer District, 211 S.C. 77, 44 S.E.2d 88 (1947).