

The State of South Carolina



Office of the Attorney General

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March 13, 1985

The Honorable Caldwell T. Hinson
Senator, District No. 16
513 Gressette Building
Columbia, South Carolina 29202

Dear Senator Hinson:

You have asked this Office whether one person may concurrently serve as a county probation officer and on the Lancaster County Board of Voter Registration and, if so, whether the individual should resign from one of the positions.

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 a county probation officer would be considered an officer for dual office holding purposes. See Ops. Atty. Gen. dated July 11, 1984; July 21, 1981; September 27, 1982; and December 16, 1964, copies of which are enclosed. An examination of local laws has revealed no unique laws as to probation officers in Lancaster County; thus, we would conclude that our prior opinions would be applicable to probation officers in Lancaster County.

Members of county boards of voter registration have been considered in numerous opinions of this Office, which opinions have concluded that such members would also be considered officers for dual office holding purposes. See Ops. Atty. Gen.

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dated July 11, 1984; October 4, 1983; and October 22, 1982, copies of which are enclosed. As with probation officers, this Office has located no local law unique to Lancaster County which would render these prior opinions inapplicable to the Lancaster County Board of Voter Registration; thus, we would conclude that such members are officers for dual office holding purposes.

Based on the foregoing, it is the opinion of this Office that one who would serve concurrently as a probation officer and on the Board of Voter Registration for Lancaster County would most probably contravene the dual office holding provisions of the State Constitution.

You have also asked whether the individual so serving should resign from one of the positions; you have informed this Office that the individual was a probation officer at the time he became a member of the board of registration. We would advise that if a person holds one office on the date he assumes a second office, both offices falling within the provisions of Article XVII, § 1A of the Constitution, he is deemed to have vacated the first office. Mitchell v. Jones, 94 S.C. 487, 78 S.E. 528 (1913); Darling v. Brunson, 94 S.C. 207, 77 S.E. 860 (1913); State v. Buttz, 9 S.C. 156 (1877). Although the vacancy in the first office has been created by operation of law, it would nevertheless be a good practice for the individual to submit a letter of resignation to the appropriate appointing authority so that the appointing authority be made aware of the vacancy and the need to fill it.

We trust that the above and the enclosed opinions have satisfactorily responded to your inquiries. Please advise us if we may provide additional information or clarification.

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP:djg
Enclosures

REVIEWED AND APPROVED BY:

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