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March 27, 1985 ch 27, 1985

David A. Merline, Esquire
Merline & Thomas
Post Office Box 10796
Greenville, SC 29603

Dear Mr. Merline:

By your letter of March 19, 1985, you have asked whether one person may serve concurrently as a member of the Greenville County Museum Commission and on the Board of Directors of the Governor's School for the Arts without contravening 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).

By a letter dated April 14, 1980, this Office has previously advised you that one who serves on the Greenville County Museum Commission would hold an office for dual office holding purposes. A copy of that letter is enclosed herewith for your convenience.

The Board of Directors of the Governor's School for the Arts was created by Governor Riley by Executive Order No. 83-26. Nine members are appointed by the Governor, three from the state at large and one from each of the state's six congressional districts. The members serve terms of three years each; there are no provisions for qualifications.

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an oath, or a salary. Powers and Duties of the Board the Board include reviewing and reporting to the Governor on the progress and success of the School for the Arts; reviewing and making recommendations on budgetary matters; providing direction on matters of major importance; and developing and implementing a funding program from the private sector for the School. The actual administration of the program occurs by way of any agreement between the Governor's Office and the School District of Greenville County. It thus appears that the powers and duties exercised by the Board do not involve an exercise of sovereign power but are more advisory in nature.

In an opinion of this Office dated April 12, 1977, as to a county Grass Roots Citizens Advisory Committee not being an office, having been created indirectly by Executive Order, it was stated:

Previous opinions of this Office have been that a member of an office created by Executive Order is not an officer unless there is state statutory or constitutional authority for such action by the Governor.

Because we can locate no statutory authority relative to the creation of the School for the Arts or the appointment of the Board of Directors, we would conclude that one who would serve on the Board would not hold an office for dual office holding purposes.

In conclusion, it is the opinion of this Office that one who would serve concurrently on the Greenville County Museum Commission and the Board of Directors of the Governor's School for the Arts most probably would not contravene the dual office holding provisions of the State Constitution.

Sincerely,

Patricia D. Petway
Patricia D. Petway
Assistant Attorney General

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Enclosure Enclosure

REVIEWED AND APPROVED BY: APPROVED BY:

Robert D. Cook
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Executive Assistant for Opinions