

The State of South Carolina



Office of the Attorney General

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June 12, 1986

The Honorable G. Ralph Davenport, Jr.
Member, House of Representatives
Post Office Box 1301
Spartanburg, South Carolina 29304

Dear Representative Davenport:

You have asked whether an individual who is employed by the South Carolina Department of Health and Environmental Control may concurrently serve on the Spartanburg County Department of Social Services or Department of Mental Health board of directors without violating the dual office holding prohibitions 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).

This Office has opined on numerous occasions that one who would serve on a county board of social services would hold an office for dual office holding purposes. A representative opinion dated January 16, 1979, is enclosed herewith; although it addresses the Richland County board, it would be equally applicable to the Spartanburg County board.

Establishment of local mental health programs and clinics and governing boards thereof is provided for in Sections 44-15-10 et seq. of the Code of Laws of South Carolina (1976, as

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amended). This Office has opined that one who serves on such a local mental health board would hold an office for dual office holding purposes. See Ops. Atty. Gen. dated June 5, 1981 and July 10, 1963 (construing the same provisions in the 1962 Code). The reasoning of these opinions would be applicable to the Spartanburg County local mental health center board.

The individual in question is employed by DHEC within Spartanburg County as a Director of Social Work I. His position is not created by statute, nor are duties specified by statute; duties and qualifications are specified in a job description for everyone of that particular class code prepared by the state Division of Human Resource Management. The individual is salaried and is not employed for a specific term of years. His duties include planning, development, administration, and evaluation of social work programs within DHEC; these duties do not appear to involve the exercise of a portion of the sovereign power of the State. In this instance, the individual would be an employee rather than an officer; the following from Sanders v. Belue, is relevant:

[O]ne who merely performs the duties required of him by persons employing him under an express contract or otherwise, though such persons be themselves public officers, and though the employment be in or about a public work or business, is a mere employee.

Id., 78 S.C. at 174. See also Op. Atty. Gen. dated September 16, 1969, as to a social worker employed by the Department of Mental Health (enclosed).

Thus, the individual may be appointed to serve on the board of either the mental health center or the Department of Social Services (but not both positions) while he is so employed as a Director of Social Work I by DHEC, without violating the dual office holding prohibitions of the State Constitution.

The individual may wish to consult with DHEC officials to make certain that an appointment to either position will not violate any agency policies. Because DHEC programs occasionally are interrelated with social service or mental health programs, the individual, if appointed, should be aware of the requirements of the Ethics Act, a copy of which is enclosed.

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If we may provide additional information or assistance,
please let us know.

Sincerely,

Patricia D. Petway

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Assistant Attorney General

PDP/an

Enclosures

REVIEWED AND APPROVED BY:

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cc: Yvonne Perry, Spartanburg County Delegation Office