

The State of South Carolina



Office of the Attorney General

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September 26, 1986

The Honorable James C. Johnson
Member, House of Representatives
128 Maxwell Avenue
Greenwood, South Carolina 29646

Dear Representative Johnson:

By your letter of September 22, 1986, you have asked for an opinion as to whether an individual may serve concurrently as the Greenwood County Veterans Affairs Officer and as a member of the Greenwood School District 50 Board of Trustees without contravening 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 a county veterans affairs officer (sometimes called veterans service officer), as created by Section 25-11-40 of the Code of Laws of South Carolina (1976), would be an officer for dual office holding purposes. A representative opinion dated April 29, 1985 and referencing other opinions, is enclosed herewith.

Similarly, this Office has concluded in numerous opinions that one who serves on a school district board of trustees holds an office for dual office holding purposes. See Ops. Atty. Gen. dated March 16, 1982; March 29, 1982; June 22, 1982; and December 29, 1983, copies of which are enclosed.

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Thus, in the opinion of this Office, one who would serve concurrently as a county veterans affairs officer and on a school district board of trustees would most probably contravene the dual office holding prohibitions of the State Constitution.

Also enclosed is an opinion dated February 19, 1984, which explains the concepts of dual office holding, vacation of office, and officers de facto and de jure. Basically, if a person holds one office on the date he accepts 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 held and would serve in a de facto capacity until a successor has been duly selected. He would be considered a de jure officer as to the second, or more recently accepted, office. The opinion enclosed herewith refers to the well-established body of case law in this area.

We trust that we have adequately responded to your inquiry. Please advise if clarification or additional information should be needed.

With kindest regards, I am

Sincerely,


Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/rhm

Enclosures

REVIEWED AND APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions