

The State of South Carolina



Office of the Attorney General

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June 1, 1987

The Honorable Charles L. Powell
Senator, District No. 4
506 Gressette Building
Columbia, South Carolina 29202

Dear Senator Powell:

You have asked for the opinion of this Office as to whether an individual presently serving on the Agriculture Commission may also simultaneously serve on a regional housing authority. Based on the following, it is the opinion of this Office that one who would so serve would most probably contravene the dual office holding prohibitions 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).

You have advised the individual is presently serving on the Agriculture Commission. The Commission was created by Section 46-5-10 et seq., Code of Laws of South Carolina (1976, as revised). The Commission consists of various specified individuals, including persons from each judicial circuit, legislators, and the Commissioner of Agriculture. The individuals representing each judicial circuit are elected by the legislative delegations comprising the respective judicial circuits for a term of

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four years. Section 46-5-10 contains provisions requiring commissioners to take an oath of office. No salary is specified, and there are no specified qualifications for persons elected to represent the various judicial circuits on the Agriculture Commission. Powers of the Agriculture Commission are specified in Section 46-5-20 and include the power to adopt rules and regulations, to approve the budget requirements of institutions and agencies under the control of the Department of Agriculture prior to their submission to the Budget and Control Board, and other related powers. Clearly these duties involve an exercise of a portion of the sovereign power of the State.

Considering all of the foregoing factors, it is the opinion of this Office that one who would serve on the Commission of Agriculture would hold an office for dual office holding purposes.

The individual in question seeks appointment to a regional housing authority. Article 9 of Chapter 3 of Title 31 of the South Carolina Code of Laws authorizes such regional housing authorities to be created. Section 31-3-960 of the Code provides for the appointment of commissioners of regional housing authorities. Qualifications of commissioners are specified by Section 31-3-970. By Section 31-3-980, terms of office of the commissioners are set at five (5) years and until the successors are appointed and have qualified. No specific oath is required, and there is no specific mention of a salary. The functions, rights, powers, and duties of regional housing authorities are the same as those functions, rights, powers, and duties of city or county housing authorities according to Section 31-3-1150 and other statutes related thereto. A review of these statutes reveals that the housing authority commissioners would also exercise a portion of the sovereign power of the State.

Considering all of the foregoing, it is the opinion of this Office that one who would serve as a commissioner of a regional housing authority would hold an office for the purposes of dual office holding. We would note that several of the statutes make reference to commissioners' offices particularly in terms of "term of office." The General Assembly seems to have also considered these individuals to be office holders. The same conclusion, that a housing authority commissioner would be an officer, has been reached as to one serving on a municipal housing authority. See Op. Atty. Gen. dated November 18, 1986. There appears to be no cogent reason to reach a different conclusion with respect to one who would serve as a commissioner of a regional housing authority.

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In conclusion, because both positions would most probably be deemed to be offices for dual office holding purposes, it would be the opinion of this Office that one who would serve on both the Commission of Agriculture and as a commissioner of a regional housing authority simultaneously would most probably contravene the dual office holding prohibitions of the State Constitution.

With kindest regards, I am

Sincerely yours,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

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REVIEWED AND APPROVED BY:

Robert D. Cook

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