

The State of South Carolina



Office of the Attorney General

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March 23, 1987

The Honorable John W. Matthews, Jr.
Member, South Carolina Senate
608 Gressette Building
Columbia, South Carolina 29202

Dear Senator Matthews:

You have asked whether one person may serve simultaneously as a magistrate and as a member of the board of trustees of South Carolina State College without violating the dual office 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 stated on numerous occasions that one who serves as a magistrate would be an officer for dual office holding purposes. As representative of these numerous opinions, enclosed please find an opinion dated August 13, 1986.

The board of trustees of South Carolina State College is provided for by Section 59-127-20 et seq., Code of Laws of South Carolina (1976 & 1985 Cum. Supp.). Section 59-127-20 specifies that members of the board are to be elected by the General Assembly or appointed by the Governor, in the case of the at-large board member, for terms of six years and further that members are entitled to receive subsistence, per diem, and

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mileage payments as are authorized for members of state boards, committees, and commissions. At least one member must meet a qualification of being an alumnus of South Carolina State College; no qualifications are specified for the remaining members. No specific provisions are made for board members to take an oath.

General powers of the board of trustees are found in Section 59-127-60 and 59-127-70 of the Code; trustees are given the powers to sell, purchase, or exchange real estate; fix the time and duration of student vacations; provide necessary buildings; establish courses of study; select professors and determine their salaries; and other duties. The board of trustees is clearly exercising a portion of the sovereign power of the State in managing and controlling South Carolina State College.

Considering all of the factors noted above, it is the opinion of this Office that one who would serve on the board of trustees of South Carolina State College would hold an office for dual office holding purposes. Thus, one who would serve simultaneously as magistrate and as a trustee of South Carolina State College would most probably contravene the dual office holding prohibitions of the State Constitution.

With kindest regards, I am

Sincerely,

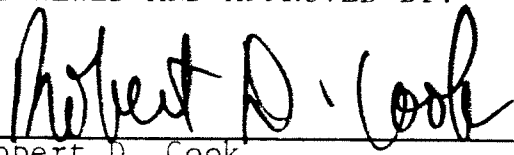


Charles H. Richardson
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Enclosure

REVIEWED AND APPROVED BY:



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