

The State of South Carolina



Office of the Attorney General

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July 8, 1985

The Honorable Derial L. Ogburn
Member, House of Representatives
Post Office Box 311
Jefferson, South Carolina 29718

Dear Representative Ogburn:

In a letter to this Office you questioned whether the dual office holding provisions of the State Constitution would prevent an individual from serving simultaneously as a member of the House of Representatives and as an executive director for a state-wide association of professional people. You stated that your duties would involve organizing and recruiting membership, planning the annual convention, holding regular meetings, and operating their Columbia office. As indicated in our telephone conversation, you also plan to request an opinion from the House Ethics Committee on the propriety of holding the referenced positions simultaneously.

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 determined on numerous occasions that one who serves in the House of Representatives would hold an office in the constitutional sense of the term. See, for example, Ops. Atty. Gen. dated September 7, 1979; April 16, 1982; March 27, 1980.


REQUEST LETTER

Continuation Sheet Number 2
To: The Honorable Derial L. Ogburn
July 8, 1985

As to the executive director position, I am unaware of any prior opinions dealing with dual office holding where this Office has specifically addressed such a position. However, an opinion of this Office dated April 4, 1985, a copy of which is enclosed, which referenced the definitions of an office supplied by the State Supreme Court in Sanders and Crenshaw, stated that an individual who held an office of a private professional organization, the South Carolina Funeral Directors Association, would not hold an office for dual office holding purposes. Referencing such, this Office would similarly conclude that the position of executive director of the state-wide association of professional people as set forth in your letter would not constitute an office for dual office holding purposes. Therefore, the constitutional prohibition against dual office holding would not prevent you from serving in such capacity while being a member of the State House of Representatives.

If there is anything further, please advise.

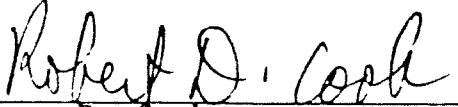
Sincerely,


Charles H. Richardson
Assistant Attorney General

CHR/an

Enclosure

REVIEWED AND APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions