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advising

The State of South Carolina



Office of the Attorney General

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ATTORNEY GENERAL

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June 11, 1985

Thurmond Bishop, Esquire
Abbeville County Attorney
122 Court Square
Abbeville, South Carolina 29620

Dear Mr. Bishop:

By your letter of May 31, 1985, you have asked, on behalf of Abbeville County Council, whether an individual may serve simultaneously as a member of the House of Representatives and as the executive director of the Abbeville County Research, Planning and Development Board ("Board"). This Office concurs with your conclusion that there would be no dual office holding by that individual.

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 (enclosed); April 16, 1982; March 27, 1980; and many others.

In researching prior opinions, it appears that this Office has never addressed, by formal opinion, the position of executive director of the Abbeville County Research, Planning and Development Board. You have advised that the Board was created by the

REQUEST LETTER

Continuation Sheet Number 2
To: Thurmond Bishop, Esquire
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General Assembly before the advent of Home Rule. While the governing board is created by the act, the act permitted the Board to employ an executive director but did not specify tenure, powers, duties, qualifications, or other such factors generally related to officer-holders. See Sanders v. Belue, and State v. Crenshaw, both supra. You have advised that the executive director is employed at the pleasure of the Board, that he took no oath of office, and that his salary is derived in part from county funds as well as donations and contributions. It thus appears that the executive director of the Board would not himself be an officer, but would be an employee. In that regard, the following from Sanders v. Belue, supra, is appropriate:

[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.

78 S.C. at 174.

In conclusion, this Office concurs with your conclusion that one who would serve simultaneously as a member of the House of Representatives and as executive director of the Abbeville County Research, Planning and Development Board would not contravene the dual office holding prohibition of Article XVII, Section 1A of the State Constitution.

Please advise if additional assistance or clarification should be necessary.

Sincerely,

Patricia D. Petway
Patricia D. Petway
Assistant Attorney General

PDP/djg
Enclosure

REVIEWED AND APPROVED BY:

Robert D. Cook

Robert D. Cook
Executive Assistant for Opinions