

The State of South Carolina



Office of the Attorney General

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
TELEPHONE 803-758-3970

March 11, 1985

The Honorable Robert B. Brown
Member, House of Representatives
414-D Blatt Building
Columbia, South Carolina 29211

Dear Representative Brown:

In a telephone conversation you referenced a situation where a member of the Marion County Council is seeking the position of county attendance supervisor with the Marion County schools. You indicated that the selection of the individual to fill the position would be made by the Marion County Board of Education. You further indicated that the individuals presently serving as members of the County Board of Education were appointed by the Marion County Council, of which the individual now seeking the position of county attendance supervisor was a member at the time the appointments were made. You have questioned whether there are any prohibitions to the member of the County Council seeking or, if selected, accepting the position of county attendance supervisor.

Please be advised that I am unaware of any State statutory provisions which would preclude such appointment or acceptance. I have particularly reviewed the provisions of this State's Ethics Act, Sections 8-13-10 et seq., Code of Laws of South Carolina, 1976, as amended, and am unaware of any provisions of the Ethics Act which would absolutely preclude this type service.

I have also examined the question of whether such a relationship would violate common law master-servant principles. Such principles are summarized as follows:

Continuation Sheet Number 2
To: The Honorable Robert E. Brown
March 11, 1985

"(a) conflict of interest exists where one office is subordinate to the other, and subject in some degree to the supervisory power of its incumbent, or where the incumbent of one of the offices has the power of appointment as to the other office, or has the power to remove the incumbent of the other or to punish the other. Furthermore, a conflict of interest may be demonstrated by the power to regulate the compensation of the other...." 67 C.J.S. Officers Section 27. See also: McMahan v. Jones, 94 S.C. 362, 77 S.E. 1022 (1913).

Referencing such, there does not appear to be any master-servant conflict in the hiring situation as outlined by you. The County Council does not fill the position of county attendance supervisor and does not exercise any direct control or authority over the holder of such position.

In responding to your inquiry this Office has also reviewed the question of whether an individual may serve simultaneously as chairman of a county council and county attendance supervisor without violating the dual office holding provisions 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 repeatedly held that a member of a county council holds an office for dual office holding purposes. See: Opinions dated 1-31-85; 1-4-85; 12-20-83; 11-15-83. However, based upon our understanding of the position of county attendance supervisor, it does not appear that one who serves in such

Continuation Sheet Number 3
To: The Honorable Robert B. Brown
March 11, 1985

capacity would hold an office for dual office holding purposes. 1/

The position of county attendance supervisor is provided for by Sections 59-65-210 et seq., Code of Laws of South Carolina, 1976. However, a review of such provisions fails to provide any indication that a county attendance supervisor exercises some portion of the sovereign power of the State. While Section 59-65-220 provides for the election of a county attendance supervisor, the statute in its later provisions indicates that individuals holding such position are considered to be employees. The characterization by the General Assembly of such position as that of an employee is entitled to great weight. Such distinction further removes them from being considered to be officers for dual office holding purposes. Moreover, in such statute, in referring to the election by members of the county board of education, it is stated that such individual is to be elected "...by the members of the county board of education whose terms of office run concurrently with or extend beyond the period of employment of such supervisor." The contrast in the same statute between the reference to the "term of office" for the members of the board of education and the "period of employment" for a county attendance supervisor also adds to the determination that the position of county

1/ In addition to a review of State statutory provisions dealing with the position of county attendance supervisor, this Office was provided with a copy of the publication of the South Carolina Department of Education entitled "Effective Attendance Services - A Guide for Attendance Supervisors and Administrators" which generally outlined the duties and responsibilities of such supervisors. A review of such was made in evaluating the question of whether such a position is an office for dual office holding purposes.

Continuation Sheet Number 4
To: The Honorable Robert B. Brown
March 11, 1985

attendance supervisor is not an office for dual office holding purposes. 2/

I would only further advise that if the member of the County Council is employed as the county attendance supervisor, he should be made aware of the provisions of Section 8-13-460 of the Code. Such statute generally would apply to actions or decisions of a member of County Council which would affect the position of county attendance supervisor. Section 8-13-460 provides in part that:

2/ This Office also examined the provisions of Sections 59-65-50 et seq. of the Code in dealing with the question of whether the referenced position is an office. Section 59-65-50 particularly states that

"(i) If the board of trustees of a school district or its designee is unable to obtain the school attendance of a child ... the board or its designee shall report such nonattendance in writing to the juvenile court...."

In a previous opinion, 1969 Op. Atty. Gen. No. 2774 pp. 264-265, it was stated that a county board of education could designate another person or entity to exercise its powers under the referenced provision. It is our information that in some instances a county attendance supervisor does appear in court in school nonattendance situations. While it could be argued that a county attendance supervisor in appearing in court is "exercising some portion of the sovereign authority of the State", it appears that pursuant to Section 59-65-50, the reporting of school nonattendance of a child is mandatory and does not involve discretionary authority such as that utilized by a prosecutor. See Op. Atty. Gen. No. 79-114 pp. 161-162. Without some further more specific delegation of authority to exercise sovereign authority, this Office cannot conclude that the court appearances are a basis for determining that the position of county attendance supervisor is an office.

Continuation Sheet Number 5
To: The Honorable Robert B. Brown
March 11, 1985

"Any public official or public employee who, in the discharge of his official duties would be required to take action or make a decision which would substantially affect directly his personal financial interest or those of a member of his household, or a business with which he is associated, shall instead take the following actions:

(a) Prepare a written statement describing the matter requiring actions or decisions, and the nature of his potential conflict of interest with respect to such action or decision.

* * *

(c) If he is a public employee, he shall furnish a copy to his superior, if any, who shall assign the matter to another employee who does not have a potential conflict of interest. If he has no immediate superior, he shall take such action as prescribed by the State Ethics Commission. If the public official is a member of the governing body of any agency, commission, board, or of any county, municipality, or other political subdivision, he shall furnish a copy to the presiding officer and to the members of that governing body, who shall cause such statement to be printed in the minutes and shall require that the member be excused from any votes, deliberations, and other actions on the matter on which the potential conflict of interests exists, and shall cause such disqualification and the reasons therefor to be noted in the minutes."

Also, the County Councilman should insure that he does not utilize the influence of his council position to obtain favorable treatment for the consideration of his application for the position of county attendance supervisor. Section 8-13-410 provides in part as follows:

Continuation Sheet Number 6
To: The Honorable Robert B. Brown
March 11, 1985

"(1) No public official or public employee shall use his official position or office to obtain financial gain for himself."

This Office in reviewing your question has not reviewed any county regulations which may be applicable to your question. Such should be referred to the Marion County Attorney for his consideration.

If there are any questions, please advise.

Sincerely,



Charles H. Richardson
Assistant Attorney General

CHR:djg

REVIEWED AND APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions