

The State of South Carolina



Office of the Attorney General

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November 27, 1985

The Honorable George H. Bailey
Member, House of Representatives
100 Meets Street
St. George, South Carolina 29477

Dear Representative Bailey:

You have asked for the opinion of this Office as to whether an individual would violate the dual office holding prohibitions of the State Constitution if he were to serve concurrently on a county board of education and on the State Board of Education.

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 concluded on numerous occasions that one who would serve on a county board of education would hold an office for dual office holding purposes. Representative opinions dated July 8, 1983; March 6, 1979; and January 17, 1985 are enclosed. The opinion of July 8, 1983 may be of particular interest to you since it deals with a Dorchester County school board.

The State Board of Education was established pursuant to Section 59-5-10 et seq. of the Code of Laws of South Carolina (1976). One member is to be appointed from each judicial circuit by the legislative delegations representing the counties

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within each circuit. Members of the board serve for terms of four years. Section 59-5-10. The only qualifications specified by statute are that a member be a registered elector of this State and that he take an oath before entering upon the duties of his office. Section 59-5-20. Compensation in the form of per diem and mileage as provided for members of the General Assembly is specified by Section 59-5-30. Powers and duties are specified by Sections 59-5-60, 59-5-80, 59-5-90, 59-5-100, 59-5-110, and 59-5-120 and entail the basic governance of the public schools of this State, certification of teachers, supervision of agencies relative to education, and so forth. Clearly these duties involve an exercise of a portion of the sovereign power of the State.

Based on the foregoing, it is the opinion of this Office that one who would serve as a member of the State Board of Education would hold an office for dual office holding purposes. Furthermore, one who would serve concurrently on the State Board of Education and on a county board of education would most probably contravene the dual office holding prohibition of the State Constitution.

With kindest regards, I am

Sincerely,

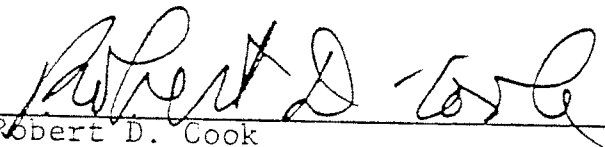
Patricia D. Petway

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Enclosures

REVIEWED AND APPROVED BY:


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