

# 1826 Letter

# The State of South Carolina



Handwritten notes and signatures in the top right corner.

## 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

October 21, 1985

Paul M. Fata, Esquire  
Lee County Attorney  
Post Office Drawer 868  
Bishopville, South Carolina 29010

Dear Mr. Fata:

On behalf of the Lee County Council, you have asked whether the dual office holding prohibitions of the State Constitution would be violated if an individual served simultaneously as a member of the Lee County School Board and as a member of the Lee County Tax Appeals Board. We concur with your conclusion that holding both offices simultaneously would contravene 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).

As is stated in an opinion of this Office dated January 17, 1985, this Office has determined on numerous occasions that one elected to serve on a county school board would hold an office for dual office holding purposes. Ops. Atty. Gen. dated July 8, 1983 and March 6, 1979. Copies of all opinions are enclosed.

A search of prior opinions of this Office revealed that the question of a member of the Lee County Tax Appeals Board as an office holder has apparently never been addressed. Thus, we

Mr. Fata  
Page 2  
October 21, 1985

must examine statutory authority relative to the Board and its members to determine their status as office holders.

The Tax Appeals Board for Lee County was created by Act No. 312, 1955 Acts and Joint Resolutions, as modified by Act No. 77 of 1961. In Section 1 of Act No. 77, which provides in pertinent part:

There is hereby created a Board of Tax Appeals for Lee County, which shall consist of seven residents of the county, five of whom shall be appointed by the Governor on the recommendation of a majority of the County Legislative Delegation, one of whom shall likewise be appointed on the recommendation of the Town Council of Lynchburg and one of whom shall likewise be appointed on the recommendation of the Town Council of Bishopville. ...

A term of "two years and until their successors are appointed and qualified" is specified. Payment at the rate of ten dollars per day, not to exceed ten days in each calendar year, is also specified. No qualifications or an oath are required by either act. Duties of the Board would include such activities as equalizing property assessments, hearing appeals to the effect that property has not properly assessed or listed by the county auditor or assessor, and so forth, all of which involve an exercise of a portion of the sovereign power of the State.

Considering all of the above factors, we would advise that one who would serve as a member of the Lee County Tax Appeals Board would hold an office for dual office holding purposes. Thus, we concur with your conclusion that one who would concurrently serve on that Board and on the Lee County School Board would contravene the dual office holding prohibition of the State Constitution.

You had also asked how the dual office holding prohibition operates when one person is deemed to be holding two offices. Enclosed please find copies of opinions dated January 17, 1985 and October 25, 1984, which opinions discuss the distinction between de facto and de jure officers. You may wish to look at Mitchell v. Jones, 94 S.C. 487, 78 S.E. 528 (1913); Darling v. Brunson, 94 S.C. 207, 77 S.E. 860 (1913); State v. Buttz, 9 S.C. 156 (1877); Bradford v. Byrnes, 221 S.C. 255, 70 S.E.2d 228 (1952); South Carolina Digest, "Officers and Public Employees," key no. 55 et seq.; 67 C.J.S. Officers § 32; and 63A Am.Jur.2d Public Officers and Employees § 82.

Mr. Fata  
Page 3  
October 21, 1985

We are not aware of the order in which the individual assumed these offices. As to the first, he would be a de facto officer and a vacancy would exist to be filled by a de jure officer. As to the second office, or the one most recently assumed, he would serve as a de jure officer. The vacancy in the first office could be filled by the appropriate appointing body, though we would suggest that a determination of fact as to dual office holding be made first with the individual being given an opportunity to express his views in the matter.

We hope that the foregoing will be beneficial to you. Please let us know if clarification or additional assistance should be needed.

Sincerely,

*Patricia D. Petway*

Patricia D. Petway  
Assistant Attorney General

PDP/an

Enclosures

REVIEWED AND APPROVED BY:

*Robert D. Cook*

Robert D. Cook  
Executive Assistant for Opinions