

1984 WL 249832 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 15, 1984

*1 Archie L. Harman, Esquire
Post Office Box 846
Lexington, South Carolina 29072

Dear Mr. Harman:

The have asked whether one person serving simultaneously as a member of the Lexington County Planning Commission and the Richland-Lexington Counties Commission for Technical Education contravenes the dual office holding provisions of the Constitution of the State of South Carolina. In accordance with the policy of this office you, as Lexington County Attorney, have submitted to this office the reasons why you are of the opinion that the situation would constitute dual office holding. This office agrees with your opinion for the following reasons.

[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 previously concluded that membership on the Richland-Lexington Counties Commission for Technical Education is an office for dual office holding purposes. [Op. Atty. Gen.](#) (December 10, 1981) [enclosed].

Moreover, this office has also held that members of various planning commissions are officers for the purposes of dual office holding. [Op. Atty. Gen.](#) (January 31, 1984) [enclosed]. We have not previously had an opportunity to consider whether a member of the Lexington County Planning Commission would occupy an office.

We understand that pursuant to Home Rule, Lexington County, by ordinance has adopted [Sections 6-7-320 through 6-7-1280 of the Code of Laws of South Carolina](#) (1976, as amended), for the purpose of establishing the Lexington County Planning Commission. There are nine members on the Commission, which is set up in similar fashion to Lexington County Council's single-member districts, and a specific tenure is prescribed. Many sections of Chapter 7 of Title 6 specify powers of the Commission; for examples, see Sections 6-7-340, - 570, -720, -1030, -1040, and -1050. A review of the powers would suggest the conclusion that the Commission is exercising a portion of the sovereign power of the State. Based on these factors, one who serves on the Lexington County Planning Commission most probably holds an office for dual office holding purposes.

If we may be of further assistance, please advise us.

Sincerely,

Robert D. Cook
Executive Assistant for Opinions

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