1984 WL 249837 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
March 1, 1984

***1** The Honorable Dick Elliott
Member
House of Representatives
326-A Blatt Building
Columbia, South Carolina 29211

Dear Representative Elliott:
You have asked this Office whether a conflict of interest would exist if the General Assembly, in increasing the size of the Loris Community Hospital Board from five to seven members, were to name the current hospital administrator to that Board. We would advise that the administrator's 'wearing two hats,' as you described the situation, would violate common law master-servant principles; but we would note that the General Assembly is certainly empowered to abrogate such common law principles if that body so chooses to act.

The Loris Community Hospital Commission, or Board, was established pursuant to Act No. 742, 1946 Acts and Joint Resolutions, Section 2. [1] Section 3 of the Act sets forth the powers and duties of the Commission, including the power '(7). To employ supervisors, assistants and such personnel as may be necessary to operate and maintain the hospital, including the appointment of a medical staff.' The employment of a hospital administrator is not specifically mentioned in the Act but presumably would be covered by Section 3(7).

One who is employed, such as a hospital administrator, would be subject to the direction and control of the employing body, here the Board or Commission, as to the means, method, and manner of performing his duties. See, King v. Southwestern Greyhound Lines, 169 F. 2d 497 (10th Cir. 1948); also A.J. Meyer & Co. v. Unemployment Compensation Commission, 348 Mo. 147, 152 S.W. 2d 184 (1941). Under the proposal that the hospital administrator serve as a member of the Board or Commission that employs him, then the administrator as servant would be a member of the board which would act as master, setting the administrator's salary and otherwise directing or controlling his activities. One person so serving as both master and servant would contravene the common law principles of the master-servant relationship. [2] This principle has been discussed in Opinions of the Attorney General dated March 3, 1978 and January 31, 1984, which are enclosed for your convenience.

You noted in your letter of February 10, 1984, that the proposed legislation would probably be special legislation. As you are aware of that possibility, this Office will not comment further.

If you need further clarification in this matter, please advise this Office.
Sincerely,

Patricia D. Petway
Staff Attorney

Footnotes

1 That Act was amended by Act No. 1127, 1962 Acts and Joint Resolutions; the amendments are not relevant to the issue under consideration at this time.

2 As noted, however, the General Assembly has the power to override such common-law principles if it so desires.

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