

1984 S.C. Op. Atty. Gen. 279 (S.C.A.G.), 1984 S.C. Op. Atty. Gen. No. 84-124, 1984 WL 159930

Office of the Attorney General

State of South Carolina

Opinion No. 84-124

October 25, 1984

*1 The Honorable McKinley Washington, Jr.

Member

House of Representatives

Post Office Box 247

Ravenel, South Carolina 29470

Dear Representative Washington:

By your letter of October 16, 1984, you have asked for the opinion of this Office as to whether persons currently serving as appointed members of state or county boards and commissions are prohibited from working as poll managers during primary, run-off and general elections. We assume that you are referring to the potential problem of dual office holding should one person concurrently serve as a member of such board or commission and as a poll manager.

[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).

Applying these criteria to the position of poll manager, this Office has consistently advised in the past that a poll manager is a public officer. See [Op. Atty. Gen.](#) dated June 11, 1984, enclosed. The position of poll manager is established by [Section 7–13–70, Code of Laws of South Carolina \(1976\)](#), and poll managers are appointed by county election commissioners. [Section 7–13–70](#) also specifies an oath which must be taken, subscribed, and filed with the Clerk of Court in the appropriate county; the managers also take and sign an additional oath specified in [Section 7–13–100](#) prior to opening the polls. By [Section 7–13–140](#), poll managers are given police power to maintain order at the polls and to enforce obedience to their lawful commands. Poll managers receive a per diem of \$25.00. See [Act No 512, Part I, § 13, 1984 Acts and Joint Resolutions](#). Clearly, a poll manager is a public officer.

You have specified generally, as to the second office, one who would serve as an appointed member of a state or county board or commission. It is not possible to generalize in considering a dual office holding question, such determinations must be made on a case by case basis, applying the criteria set forth in [Sanders v. Belue](#) and [State v. Crenshaw](#), *supra*. It should be added that certain positions usually considered employment may also be considered a public office due to powers, duties, responsibilities, or amount of discretion inherent in the particular position. If you would like for this Office to address a specific office, we will be pleased to do so.

We must caution that this opinion should not be construed as automatically excluding people who serve on boards and commissions from being appointed to serve as poll managers. Each particular board or commission must be individually considered to determine whether a member thereof would hold a public office. Some boards or commissions which appear to be public are actually private or eleemosynary, and no general statement can be made without looking at the enabling documents and considering all relevant factors.

*2 We hope that we have clarified your question somewhat. Please contact us if we may provide additional information or examine specific county or state board or commission positions.

Sincerely,

Patricia D. Petway
Assistant Attorney General

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