

1983 S.C. Op. Atty. Gen. 132 (S.C.A.G.), 1983 S.C. Op. Atty. Gen. No. 83-81, 1983 WL 142750

Office of the Attorney General

State of South Carolina

Opinion No. 83-81

October 20, 1983

*1 The Honorable Herbert Kirsh
Member
House of Representatives
P. O. Box 31
Clover, SC 29710

Dear Representative Kirsh:

Attorney General Medlock has referred your letter of September 28, 1983, to me for response. You have asked whether one who would serve simultaneously as Executive Director of the York County Council on Aging, Inc., and as an appointed member of the Destinations Transportation Authority would violate the constitutional provision prohibiting an individual from holding two offices of honor or profit at the same time.

[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).

The York County Council on Aging, Inc. is an eleemosynary corporation, private except that it receives public funds. The Executive Director is hired by the Board of the Council on Aging, serves at the Board's will for an indefinite term, answers to the Board, and is paid a salary. No exercise of sovereign power is involved in this position. The person so serving as Executive Director would be an employee, rather than an officer, as the South Carolina Supreme Court has stated:

[O]ne who merely performs the duties required of him by persons employing him under an express contract or otherwise, though such persons be themselves public officers, and though the employment be in or about a public work or business, is a mere employee.

[Sanders v. Belue](#), 78 S.C. at 171.

The Destinations Transportation Authority is a body politic and corporate established pursuant to [Section 58–25–10 et seq., Code of Laws of South Carolina \(1976\)](#). The scope of the Authority is regional and includes York County within its membership. Provisions for appointment of board members are contained in [Section 58–25–30 of the Code](#); the board member is question would be appointed by the Governor upon approval of a majority of the legislative delegation and would serve a three-year term. The Authority, acting through its governing Board, is authorized to exercise sovereign powers, eminent domain in particular. [See Section 58–25–50](#). The duties of the position of Board member appear to be permanent and continuing, rather than occasional, and are not merely advisory. This position would constitute an office for the purposes of dual office holding.

Because the position of Executive Director of the York County Council on Aging, Inc., would be considered employment rather than an office, the constitutional prohibition against dual office holding would not be violated if the same person should also be appointed to the governing body of the Destinations Transportation Authority.

*2 I hope this response satisfactorily answers your question. If you need further clarification, please contact me.

Sincerely,

Particia D. Petway

Staff Attorney

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