

1983 S.C. Op. Att'y. Gen. 127 (S.C.A.G.), 1983 S.C. Op. Att'y. Gen. No. 83-79, 1983 WL 142748

Office of the Attorney General

State of South Carolina

Opinion No. 83-79

October 4, 1983

*1 The Honorable Thomas E. Smith, Jr.
Senator
District No. 11
Box 308
Pamplico, South Carolina 29583

Dear Senator Smith:

You have asked whether a person may serve on the Florence Voter Registration Board while at the same time serving as a member of the Northwest Neighborhood Project Committee, and additionally as Chairperson of the Land and Grant Committee of the City of Florence Housing Rehabilitation Program, without violating dual office holding provisions of the South Carolina Constitution.

[Article XVII, Section 1A, of the South Carolina Constitution](#) provides that no person shall hold two offices of honor or profit at the same time. In [Sanders v. Belue](#), 78 S.C. 177, 58 S.E. 762 (1907), the Court defined a public office as one which is 'created by law,' includes the exercise of some 'sovereign power, either small or great, which the public is concerned,' and requires some continuing performance. In [State v. Crenshaw](#), 274 S.C. 475, 266 S.E.2d 61 (1980), the Court elaborated upon the criteria to be examined in determining whether a position is a public office; whether the duties, tenure, salary, bond or oath are prescribed or required, and whether the one occupying the position is a representative of the sovereign are other important factors to be considered.

I

County Boards of Registration are created by §§ 7-5-10 *et seq.*, S.C. Code of Laws, 1976, as amended, and the terms of office and duties of their members are provided for therein. This office has previously concluded in several prior opinions that members of these boards are officers for dual office holding purposes. *E.g.*, Unpublished Opinions dated: October 22, 1982; October 20, 1982; June 22, 1982; August 5, 1981; August 10, 1978.

II

The Northwest Neighborhood Project Committee was established by the City Council of Florence by Resolution on June 14, 1978. The members' terms are prescribed and the general powers and duties of the committee are set forth. Briefly, these powers consist of: a) study and prepare written recommendations to the City Planning Commission concerning specific problems in Northwest Florence; b) review proposed plans of the City Council, Staff and Planning Commission and make recommendations; c) advise the Florence Urban Development Division Staff on the Community Development Project for Northwest Florence; d) provide as communication liaison between citizens and city agencies and; e) keep the citizens, City Council, Staff and Planning Commission informed and advised as to these matters.

From the above, it is clear that the Committee is capable of no binding exercise of sovereign power. To the contrary, its functions are advisory only. This office has consistently expressed the view that committees which function in a purely advisory capacity are not offices within the meaning of the dual office holding provisions of the South Carolina Constitution. *E.g.*, 1976 *Op. Att'y. Gen.* 200; 1975 *Op. Att'y. Gen.* 195; Unpublished Opinions dated: June 22, 1982; July 12, 1980; September 7, 1978.

III

*2 The Loan and Grant Committee of the City of Florence Housing Rehabilitation Program was created pursuant to a City Council resolution dated January 8, 1979 and subsequent resolution dated May 10, 1982. The six member Committee's sole function is the 'approval of cases for [federally subsidized] loans or grants which are recommended by the Housing Rehabilitation Officer.' This determination is to be made using guidelines established by the Loan and Grant Committee relevant to the credit risk of each case. The Loan and Grant Committee then, ultimately decides, on behalf of the City of Florence who obtains a rehabilitation loan or grant.

Since such a determination is a binding exercise of sovereign power, and is of interest to the public, we would advise that a member of this Committee would hold office within the meaning of the dual office holding provisions of the South Carolina Constitution.

In conclusion, with the exception of the Northwest Neighborhood Project Committee, the above positions are offices within the meaning of [Article XVII, Section 1A](#), and simultaneous occupation would result in violation of this provision.

The effect of this provision is as follows:

If a person continues to hold an office within the meaning of [Article XVII, § 1A](#) on the date he enters another such office, he is deemed to have vacated the former office. However, the person may continue to perform the duties of the previously obtained office as a de facto officer until a successor is duly selected to complete his term of office. (cites omitted) Op. Atty. Gen. dated Feb. 11, 1981 (unpublished).

Finally, this opinion is based entirely on the information you have presented this office. Any subsequent changes in law concerning these positions may necessitate reconsideration of the questions presented.

Sincerely,

Robert D. Cook
Executive Assistant for Opinions

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