

1983 S.C. Op. Atty. Gen. 92 (S.C.A.G.), 1983 S.C. Op. Atty. Gen. No. 83-59, 1983 WL 142730

Office of the Attorney General

State of South Carolina

Opinion No. 83-59

August 16, 1983

*1 The Honorable Frank Gilbert
Member
House of Representatives
1523 Rocky Way Drive
Florence, South Carolina 29501

Dear Representative Gilbert:

You have asked whether a person may currently serve on the newly created State Health and Human Services Finance Commission (HHSFC) and also serve as Director of the Florence County Community Action Agency (CAA).

[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,’ and requires some continuing performance. [State v. Crenshaw](#), 274 S.C. 475, 266 S.E.2d 61 (1980) 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 all important factors to be considered.

R-150 which creates the HHSFC provides for the exercise of sovereign power. The HHSFC will, among its other duties, administer Title XIX of the Social Security Act (Medicaid), ‘operate the State Cooperative Health Statistics Program,’ ‘administer the Social Services Block Grant Program,’ etc.

In addition, HHSFC has the power to enter into contracts. R-150 also provides for qualifications, appointment, and tenure of office for HHSFC members.¹ Thus, a member of the HHSFC would be an officer within the meaning of the definition set forth above.

Act No. 144, 1973 Acts and Joint Resolutions p. 177, which creates the CCA, gives the Commission the authority in Section 6(d), ‘to appoint agents, employees, servants, to prescribe their duties, fix their compensation, to determine if and to what extent they shall be bonded for the faithful performance of their duties . . .’ It is well-settled that subordinate positions in government can in some cases be officers. See, [Sanders](#), *supra* at 176. The distinction to be made in such a case is whether the person occupying the position is an officer or a ‘mere employee.’ In [Sanders](#), *supra* at 174, the Court said:

Conversely, one 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 employment be in or about public work or business, is a mere employee.

Section 1.4 of the Personnel Plan prepared by the Commission outlines the duties and functions of the Executive Director of the CCA. Although arguably he may exercise some sovereign power, he must obtain the approval of the Commission on implementation of any policy set by the Commission. In addition, Section 1.4 states in part that ‘a fundamental point then is that the Executive Director is an employee of the Board of Directors (the Commission).’ (emphasis added)

*2 Although the question is a close one, since the Commission designated the Executive Director an ‘employee,’ and his actions are subject to the approval and direction of the Commission, we conclude that the position of Executive Director of the CAA does not hold an office, but is an employee, within the meaning of the Sanders definition as stated above.

This conclusion is in accord with a prior opinion of this office, in which the Attorney General said:

No specific duties are imposed by statute upon the Director, (Executive Director of the County Human Relations Commission) his term is not fixed . . . he is an employee, and not an officer . . . 1975 Op's. Atty. Gen. 69.

We would advise that since only one office is involved in the two positions in question, that one may occupy both positions without violating the dual office holding provisions of the Constitution.

Sincerely,

T. Travis Medlock
Attorney General

Footnotes

- 1 This analysis assumes that the position you refer to on HHSFC is a commissioner. R-150 also creates an advisory board to the commission. An advisory board position does not constitute an office within the meaning of [XVII, Section 1A](#), thus, the dual office holding prohibitions would not apply.

1983 S.C. Op. Atty. Gen. 92 (S.C.A.G.), 1983 S.C. Op. Atty. Gen. No. 83-59, 1983 WL 142730