

1981 WL 158155 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 19, 1981

*1 Dr. John T. Wynn
President
Williamsburg Technical College
601 Lane Road
Kingstree, South Carolina 29556

Dear Dr. Wynn:

On your behalf, Henry Heriot, Legal Counsel for the State Board for Technical and Comprehensive Education, has requested the opinion of this office as to whether certain memberships on the Williamsburg Technical, Vocational, and Adult Education Center Commission (the Commission) would violate constitutional restrictions on dual office holding. art.'s VI § 3 and XVII § 1A, Constitution of South Carolina, 1895. Under Act 380, Acts and Joint Resolutions of South Carolina, 1977, the commission has eleven members, one of which ' . . . shall represent the local development board' and five of which ' . . . shall be appointed to represent the County Board of Education . . . ' which is now the Board of Trustees of the Williamsburg County School District (Act 632 of 1980). This office has been informed that of these commission positions have been held by actual members of these boards while others have been held by non-members who represent the boards. Specifically, you wish to know whether having board members serve on the commission would violate dual office holding provisions.

The answer to this question appears to turn on the meaning of the phrases ' . . . shall be appointed to represent' and 'shall represent' the boards. These phrases do not expressly state whether these persons must be members of those boards or whether they may also be non-member representatives of the boards, however, the failure of Act 380 to specify that the representatives must be board members ([see](#) the former provision for the Higher Education Commission, § 59-103-10 of the [Code of Laws of South Carolina \(1976\)](#), as amended) and its giving the choice of representatives to the Governor and legislative delegation rather than to the board itself indicates that they do not have to be board members. This conclusion is further supported by the fact that Act 380 has, apparently, been interpreted by those charged with the appointment of commission members to include non-board members as representatives. Administrative construction is entitled to respectful consideration in the construction of a statute. [See *Faile v. South Carolina Employment Security Commission*, 267 S.C. 536, 230 S.E.2d 219 \(1976\).](#)

The significance of this interpretation of Act 380 is that because the board's representatives on the commission are not required to be board members, those that are chosen from the boards are not entitled to the *ex-officio* exemptions from the dual office holding provisions of Articles VI § 3 and XVII § 1A of the Constitution of South Carolina (1895). [See *Ashmore v. Greater Greenville Sewer District*, 211 S.C. 77, 44 S.E.2d 88 \(1947\)](#); 1966-67 Op. Att'y Gen. No. 2152, p. 284. *Ex-officio* membership has been defined as being 'by virtue of [the] office' ([Ashmore](#), 44 S.E.2d at 95), and ' . . . without any other warrant or appointment than that resulting from the holding of a particular office' [[Black's Law Dictionary](#), p. 516 (5th ed. 1979)]. Here the authority of the board members as commission members would not result from the fact that they are members of the board of trustees or development board. Instead, they would serve because the Governor, on the recommendation of the legislative delegation, would have appointed them to be representatives for the boards on the commission when he could have appointed non-members instead. Thus, they would not be *ex-officio* members of the commission [([see *State v. Williams*, 260 N.C. 168, 132 S.E.2d 329 \(1963\)](#))] and would not be entitled to that exemption from the dual office holding restrictions. Those restrictions clearly apply here because the memberships on the two boards and the commission constitute offices under them. [See 1971-72 Op. Att'y Gen., No. 3273, p. 76; 1965-66 Op. Att'y Gen., No. 2111, p. 216; and 1964-65 Op. Att'y Gen., No. 1902, p. 188.](#)

*2 The opinion of this office is that members of the Williamsburg County Board of School Trustees and Williamsburg County Development Board may not serve on the commission without violating the prohibitions on dual office holding; however, because this conclusion is based on this office's interpretation of an ambiguous Act, legislative clarification of that Act's meaning might be desirable. Board members probably could serve on the commission without violating dual office holding restrictions if only board members could represent the boards. See State v. Williams, supra; Ashmore, supra; §§ 59-53-10 through 59-53-40, as amended; Act 632 of 1980; Act 58 of 1969; Act 24 of 1969; Rule 43-233, Parts II and IV, Vol. 24 of the Code, as amended; 1966-67 Op. Att'y Gen. No. 2152, p. 284.

If this office may be of further assistance, please let us know.

Very truly yours,

J. Emory Smith, Jr.
Assistant Attorney General

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