

1983 WL 182005 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 26, 1983

*1 Mr. Raymond S. Caughman
President
The Lexington State Bank
Post Office Box 8
Lexington, South Carolina 29072

Dear Mr. Caughman:

You have requested the opinion of this office on the question of whether it would be a violation of the dual office holding provisions of the South Carolina Constitution for a person to serve as Commissioner of the Lexington County Soil and Water Conservation District to also serve on the South Carolina State Board of Financial Institutions.

[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).

This office has previously determined that a commissioner of a soil and water conservation district holds an office for dual office holding purposes. [See](#), 1982 Ops. Atty. Gen., dated January 27, 1982 and July 19, 1982. (copies enclosed). This conclusion appears to be based upon the fact that the commissioner's duties and powers involve the exercise of the sovereign power of the state.

Similarly, this office has expressed the opinion that a member of the State Board of Financial Institutions holds an office for dual office holding purposes. [See](#), 1983 Op. Atty. Gen., dated March 10, 1983 (copy enclosed). They, too, are authorized to exercise the sovereign power of the state.

Based on the foregoing, it is the opinion of this office that a person serving as a Commissioner of the Lexington County Soil and Water Conservation District and as a member of the South Carolina State Board of Financial Institutions would be violating the dual office holding provisions of the South Carolina Constitution.

As to the effect of dual office holding, a person is deemed to have abandoned his first office when a second office is accepted. [Darling v. Brunson](#), 94 S.C. 207 (1912). He serves in the first office in a *de facto* capacity only; however, his actions are considered valid as affects the general public. [Walker v. Harris](#), 170 S.C. 242; and 1961 Op. Atty. Gen. No. 1125 (copy enclosed).

Regarding your second question as to how the soil and water conservation district goes about filling a vacancy, I have enclosed the applicable statutes which must be followed in nominating and electing a commissioner. I hope that this answers your questions.

Sincerely,

Carol P. Black
Staff Attorney

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