

1982 WL 189207 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 16, 1982

*1 The Honorable Ryan C. Shealy
Senator
Senatorial District No. 8
Gressette Senate Office Building
Post Office Box 142
Columbia, South Carolina 29202

Dear Senator Shealy:

You have asked the opinion of this Office on the question of whether a person concurrently holding positions as a member of the Board of Trustees for Lexington County School District No. 1 and Chief of Demographics for the Research and Statistical Services Division of the Budget and Control Board would be in violation of the provisions in the South Carolina Constitution prohibiting dual office holding.

It is provided in [Article XVII, Section 1A of the South Carolina Constitution](#) that ‘. . . no person shall hold two offices of honor or profit at the same time.’ Also see Article VI, Section 3. 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 \(1907\)](#). 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](#), South Carolina Supreme Court, Op. No. 21189, 4-9-80.

This Office has frequently expressed the opinion that a position on the Board of Trustees for a School District is an office under the South Carolina Constitution. [See, 1976 Op. Att’y. Gen. 332; and 1976 Op. Att’y. Gen. 114](#). This conclusion is based on the fact that the office and its duties are statutorily prescribed and involve the exercise of a portion of the sovereignty of the State. [See, e.g. 1974 Statutes at Large No. 1181, page 2762](#). The next avenue of inquiry is whether the position of Chief of Demographics for the Research and Statistical Services Division of the Budget and Control Board is also an ‘office,’ the holding of which by a school district trustee would contravene the constitutional proscription against dual office holding.

An examination of the statutes and rules and regulation governing the Budget and Control Board reveal that there is no statutory or regulatory provision establishing the position of Chief of Demographics or describing the duties thereof. As is evidenced by the attached position questionnaire, the position of Chief of Demographics is one filled through the State Classification Service rather than by appointment or election. The job duties described in the position questionnaire do not require the exercise of any portion of the sovereign power of the State. Furthermore, there is no oath required to be taken by the person filling this position. It appears therefore, that applying the criteria set forth in [Sanders v. Belue, supra, State v. Crenshaw, supra, and § 8-1-10 of the 1976 Code of Laws of South Carolina](#), as amended, this position would not be considered an ‘office’ in the constitutional sense of the term.

*2 Based upon the foregoing analysis, it is the opinion of this Office that a person concurrently serving as a member of the Board of Trustees for Lexington County School District No. 1 and as Chief of Demographics for the Research and Statistical Services Division of the Budget and Control Board would not be in violation of the dual office holding provisions of [Article XVII, Section 1A of the South Carolina Constitution](#).

Very truly yours,

Helen T. Zeigler
Staff Attorney

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