

1982 WL 189204 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 11, 1982

*1 Ms. Charlotte B. Fielder
Administrative Assistant
State Development Board
Post Office Box 927
Columbia, South Carolina 29202

Dear Ms. Fielder:

You have asked the opinion of this Office on the question of whether a person currently holding a position as a member of the State Development Board would be in violation of the provisions in the South Carolina Constitution prohibiting dual office holding if he also was a Chairman of Title XX Advisory Committee of the Catawba Regional Planning Council, a member of the Project Managing Agency for the S.C. Human Services Demonstration Project, or a member of the State Environmental Quality Control Advisory Committee.

[Article XVII, Section 1A of the South Carolina Constitution](#) states that ‘. . . no person shall hold two offices of honor and 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.

An examination of the former opinions of this Office and applicable statutes leaves little doubt that a member of the State Development Board holds a public office within the meaning of [Article XVII, Section 1A](#). See, 1964 Op. Att’y. Gen. 275; 1965 Op. Att’y. Gen. 104; [CODE OF LAWS OF SOUTH CAROLINA, §§ 13-3-40 and 13-3-90 \(1976\)](#); and informal opinion attached hereto. The inquiry must next focus upon the question of whether any of the three other positions described above would also be considered offices within the meaning of [Article XVII, § 1A of the South Carolina Constitution](#).

In determining if membership on an advisory committee to a regional planning council constitutes office holding, it is helpful to note those opinions which have found that membership on regional planning councils themselves is not considered office holding in the constitutional sense. See, 1969 Op. Att’y. Gen. 289; and informal opinions attached hereto. This conclusion is based in part upon the findings that regional planning councils serve only as advisory authorities and therefore do not exercise any portion of the sovereign power of the state. Since an advisory committee to such a council would have even less power than the council itself, the conclusion becomes apparent that membership on an advisory committee to a regional planning council would not be considered office holding within [Article XVII, § 1A of the South Carolina Constitution](#).

This same result is reached on the question of whether membership on the State Environmental Quality Control Advisory Committee constitutes office holding. This Committee was formed by the Department of Health and Environmental Control in October of 1979 in response to Federal Regulation 40 C.F.R. Part 25, which required all financially assisted agencies receiving grant funds under the Clean Water Act, the Safe Drinking Water Act, and the Resource Conservation and Recovery Act to provide for an advisory group to assist officials with final decision-making responsibility by making recommendations on certain issues. This Committee serves in an advisory capacity only and possesses no authority to exercise any portion of the sovereign power of the state. Therefore, a member of the State Environmental Quality Control Advisory Committee does not hold an office within the meaning of [Article XVII, § 1A](#).

*2 Finally, the question is posed as to whether a member of the Project Managing Agency for the South Carolina Human Services Demonstration Project would be considered an office holder under the South Carolina Constitution. The manner of appointment of members to the committee forming the Project Management Agency is provided for by [§ 1-25-60\(D\) of the Code of Laws of South Carolina](#), 1976, as amended. The committee's membership is derived from such diverse sources, some members serving *ex officio* and others in their private capacity, that it is impossible to determine whether membership on the committee would be considered an office without additional information concerning the source of the individual's membership. If such information can be supplied, this Office will be glad to further address this question.

Based on the foregoing, it is the opinion of this Office that a person serving concurrently as a member of the State Development Board, and Chairman of Title XX Advisory Committee to the Catawba Planning Council, or a member of the State Environmental Quality Control Advisory Committee would not be in violation of the provision of the South Carolina Constitution prohibiting dual office holding.

Very truly yours,

Helen T. Zeigler
Staff Attorney

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