

1979 WL 42794 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 5, 1979

*1 G. Ron Wenzell, Esquire
Assistant General Counsel
S. C. Department of Insurance
Post Office Box 4067
Columbia, South Carolina 29240

Dear Mr. Wenzell:

You have asked the opinion of this Office concerning your position as Assistant General Counsel for the South-Carolina Department of Insurance and whether anything would prevent you from offering for election to the Board of Education in District One (1) of Lexington County.

[Article XVII, § 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, § 3](#). Thus, it is necessary to determine whether both of the positions identified by your correspondence are offices within the prohibition of [Article XVII, § 1A](#).

It is clear that a position on the Board of Trustees for Lexington County School District Number One (1) is an office within the meaning of [Article XVII, § 1A](#). This elective office is created by State statute, and its powers are provided for by State statute and involve an exercise of some part of the State's sovereign power. Title 21, Chapter 49, Code of Laws of South Carolina, 1962 and 1975 Cumulative Supplement; Act No. 1181 of the 1974 Joint Acts and Resolutions, p. 2762; Act No. 796 of the 1978 Joint Acts and Resolutions, p. 2474; [Sanders v. Belue](#), 78 S.C. 171, 58 S.E. 762

The position of Assistant General Counsel for the South Carolina Department of Insurance is not expressly created by a State statute, and neither are its powers and duties. It would appear that this position is merely one of employment by the Department. [§ 38-3-110, Code of Laws of South Carolina](#), 1976; [Sanders v. Belue](#), *supra*. Therefore, it is not within the prohibition of [Article XVII, § 1A](#).

Please be advised, however, that an agency or department may promulgate its own rules and regulations which govern an employee of that agency or department. Therefore, if an agency or department establishes rules and regulations that apply to political activity, these guidelines would control an employee of that agency or department with regard to such activity.

If an employee is paid in whole or in part by federal funds, or if his job is related to an activity which receives federal funds, he comes within the provisions of the Hatch Act. Determinations of permissible political activities under this Act must be made by the Office of the General Counsel for the United States Civil Service Commission in Washington, D. C.

Although there does not appear to be a specific provision related to your question in Title 8, Chapter 13 of the [Code](#), 1976, *supra*, all candidates should review these statutes which deal with ethics, campaign practices, etc.

Based on the foregoing reasons and the information within the knowledge of this Office, it is our opinion that the position now held by you is not one within the meaning of [Article XVII, § 1A](#). However, this Office cannot respond to the other matters noted herein.

Sincerely yours,

*2 James M. Holly
State Attorney

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