

1980 WL 120929 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 16, 1980

*1 The Honorable J. Christopher Pracht
Representative
District Number 6
Post Office Box 574
Anderson, South Carolina 29622

Dear Representative Pracht:

Mr. McLeod has referred your recent letter to me for reply. You have stated that a man is running unopposed for school trustee and that you believe he may be appointed as a magistrate. You have asked the following questions:

1. Would it be considered dual office holding for this man to be a school trustee and a magistrate at the same time considering that one position is an elected position and the other being appointed?

The leading case on the question of dual office holding is [Sanders v. Belue, 78 S.C. 171 \(1907\)](#). The court held in part in that case that

[o]ne who is charged by law with duties involving an exercise of some part of the sovereign power, either small or great, in the performance of which the public is concerned, and which are continuing and not occasional or intermittent, is a public officer.

Under this definition both magistrate and school trustee would both be offices within the prohibition. Therefore, one person could not hold both positions.

2. This man additionally has worked at his precinct during the elections. Can he still work at this precinct if his name is on the ballot and he does not have opposition?

Your letter does not state in what capacity this man would be working at the polls; however, I assume you mean as a poll manager. South Carolina Code of Laws, 1976, Section 7-13-120 makes it a misdemeanor for any candidate whose name is on the ballot to work as a poll manager or clerk of an election.

There is no direct prohibition to a candidate being a poll watcher as long as he meets the requirement that he is a qualified voter in the county where he is to watch. However, I am not aware of any candidate who has actually served as a poll watcher in an election.

Very truly yours,

Treva G. Ashworth
Senior Assistant Attorney General

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