

1979 WL 42852 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 8, 1979

*1 Mr. John C. Wilkie, Jr.
Executive Secretary
Board of Pharmaceutical Examiners
P. O. Box 11927
Columbia, South Carolina 29211

Dear Mr. Wilkie:

Your recent letter addressed to M. Richbourg Roberson, Assistant Attorney General, has been referred to me to reply to the question concerning dual office holding.

You have asked whether the constitutional provision prohibiting dual office holding is violated by the simultaneous holding of positions on the Board of Pharmaceutical Examiners and a drug inspector of the Department of Health and Environmental Control.

In [Sanders v. Belue, 78 S.C. 171, 58 S.E. 762 \(1907\)](#), the Supreme Court defined public officer as follows:

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

The Board of Pharmaceutical Examiners is established and its duties and powers set forth in [Section 40-43-10, et seq., Code of Laws of South Carolina, 1976](#). Such position is obviously a public office for dual office holding purposes, and this Office has previously issued an opinion to that effect. 1970 Attorney General Opinion 2902, page 147.

[Section 44-53-490, Code of Laws of South Carolina, 1976](#), creates a position of drug inspector within the Department of Health and Environmental Control. As set forth in Section 44-53-480, these drug inspectors have the following powers and authority: (1) Statewide police powers; (2) authority to carry firearms; (3) authority to execute and serve search warrants, arrest warrants, administrative inspection warrants, subpoenas, and summonses; (4) authority to make investigations to determine whether there has been unlawful dispensing of controlled substances or the removal of such substances from regulated establishments or practitioners into illicit traffic; (5) authority to seize property; and (6) authority to make arrests without warrants or offenses committed in their presence. These duties and powers clearly bring the position of drug inspector with the Department of Health and Environmental Control within the definition of public officer set forth above.

Therefore, it is the opinion of this Office that the simultaneous holding of positions on the Board of Pharmaceutical Examiners and as a drug inspector for the Department of Health and Environmental Control violates [Section 1\(a\) of Article XVII of the Constitution of South Carolina](#).

Sincerely,

James W. Johnson, Jr.
Assistant Attorney General

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