

1977 WL 37320 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 26, 1977

\*1 The Honorable Ralph H. Ellis  
State Senator  
Box 235  
Little River, South Carolina 29566

Dear Senator Ellis:

You have requested my opinion with respect to whether an individual may occupy the position of member of County Council and member of the Agricultural Study Committee created by Act No. 62, approved March 1, 1967 (67 Acts 65).

The Agricultural Study Committee is vested with the following powers:

‘The Committee shall act as a continuing liaison group to study the programs and problems of agriculture in the state, recognizing the importance of agriculture to the total economy of the State and recognizing the necessity of making agriculture more productive and more profitable. The Committee shall make such reports and recommendations as it sees fit.’

In my opinion, the foregoing powers do not constitute the members thereof as officers within the meaning of the dual officeholding provision of the Constitution. There remains for consideration the construction to be given to Section 14-3707, Code of Laws, 1962, which is a part of the Home Rule legislation enacted in 1975. This provides:

‘No member of Council shall hold any other office of honor or profit in government, except military commissions and commissions as notaries public, during his elected term.’

The provisions of the foregoing section are similar to Article III, Section 3, and Article XVII, Section (1)(a), which provide: ‘But no person shall hold two offices of honor or profit at the same time.’

In my opinion, the inclusion of Section 14-3707 of the Home Rule Act was not necessary, as the prohibition against dual officeholding is constitutional and would exist irrespective of whether or not Section 14-3707 had been enacted, except, possibly, to make certain that supervisors were included within the dual officeholding prohibition.

To determine whether a position is an office or not depends upon a number of circumstances and is not subject to any precise formula. The most important criteria is whether or not a portion of the sovereignty is exercised. With respect to the Agricultural Study Committee, it is my opinion that no exercise of the sovereignty is vested in members of the Study Committee. Its powers are advisory only and, in fact, it is not required to make a report unless in its discretion it determines to do so. Other indicia of whether a position is an office are: whether it is created by law, whether an oath is required, whether it is a subordinate or administrative position as opposed to one of authority and discretion, and other pertinent considerations. Basically, to constitute an office, a position must be created by law and it must involve the exercise of some portion of the sovereignty. Members of the Study Committee hold positions created by law but, in my opinion, are not vested with any authority to exercise a portion of the sovereignty of the State. In my opinion, therefore, they are not officers within the meaning of the constitutional provision or of Section 14-3707 relating to dual officeholding.

\*2 I therefore advise that, in my opinion, a member of County Council may validly occupy the position of County Councilman and member of the Agricultural Study Committee.

Very truly yours,

Daniel R. McLeod  
Attorney General

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