

1977 WL 37392 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 6, 1977

*1 Mr. Robert M. McGreevey
Messrs. Antonow & Fink
Attorneys at Law
111 East Wacker Drive, Suite 3000
Chicago, Illinois 60601

Dear Mr. McGreevey:

Thank you for your letter of June 24 concerning the problem of dual representation of State agencies with adverse interests, the difficulty arising when two agencies, each of whom is represented by this Office, have opposing interests.

This circumstance has occurred at infrequent times. It is usually met by an ad hoc decision, generally being solved by an attorney of this Office representing one agency and either a staff counsel (who is also subject to my broad jurisdiction and control) representing the remaining agency. Alternatively, an agency is sometimes, but rarely, granted permission to employ independent counsel to represent it. The more frequent occurrence is of the type reflected in the two decisions enclosed herewith, one of which was instituted by me to seek a determination from the Supreme Court of this State with regard to the legal and ethical principles involved. My report of this case to my National Association has produced some degree of interest in the matter and there is a general expression of surprise at the decision. Following the Snipes case, I have, with some degree of regularity, assigned counsel to represent conflicting interests between agencies or before officials and agencies, as in grievance matters, etc. I do not at all condone this type of dual representation and have sought to remedy the matter from the standpoint of statutory change, but, on occasions, it is the only effective means of securing representation. For example, at the present time, I have instituted an action styled in the manner of the Snipes decision, against a solicitor (prosecuting officer), seeking a determination of the validity of a retroactive pay increase granted by the General Assembly of this State. I have just persuaded the defendant to be represented by one of his Assistants, but, failing that, I would have designated Assistants in this Office to prosecute and defend the action, which is for declaratory judgment. I must repeat that I do not approve of this policy but am compelled to resort to it on some occasions and, for that reason, sought the declaratory judgment in the Supreme Court to make certain of the validity of my procedure.

In specific answer to some of the questions which you have raised and to which I have not responded herein, State agencies, in some instances, have 'in-house' attorneys. I have persuaded the General Assembly to grant broad supervisory powers over these attorneys, but their number, as well as the scattered locations, makes it impossible to effectively administer supervisory functions of this nature.

There is no procedure for the payment of private counsel in cases of conflict, although I have in one or two instances approved the employment of private counsel.

The Office of the Attorney General is elective and has no relationship to other branches of the State government except by statutory duty to represent them in legal affairs.

*2 The following individual has written me recently concerning a conflict of interest matter which arose in her state and I assume that she has made a similar request throughout the country. She may be in a position to aid you further in your research. She is: Ileana N. Saros, Deputy Attorney General, Department of Law and Public Safety, Division of Criminal Justice, 13 Roszel Road, Princeton, New Jersey 08540.

If I may be of any further assistance, please call upon me.

Very truly yours,

Daniel R. McLeod

Attorney General

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