

1985 WL 258994 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 17, 1985

\*1 Mr. Claude Driggers  
Marlboro County Supervisor  
Post Office Box 419  
Bennettsville, South Carolina 29512

Dear Mr. Driggers:

By your letter of November 30, 1984, you have asked whether an individual may serve concurrently as Director of the Marlboro County Drug Commission and on the Marlboro County school board without contravening the dual office holding prohibitions of the Constitution of the State of South Carolina.

Article XVII, § 1A of the South Carolina Constitution provides that "... no person shall hold two offices of honor or profit at the same time." For this provision to be contravened, a person concurrently must hold two public offices which have duties involving an exercise of some portion of the sovereign power of the State. *Sanders v. Belue*, 78 S.C. 171, 58 S.E. 762 (1907). Other relevant considerations are whether statutes, or other such authority, establish the position, prescribe its tenure, duties or salary, or require qualifications or an oath for the position. *State v. Crenshaw*, 274 S.C. 475, 266 S.E.2d 61 (1980).

This Office has determined on numerous occasions that a member of a county school board would hold an office for dual office holding purposes. See *Ops. Atty. Gen.* dated July 8, 1983 and March 6, 1979, copies of which are enclosed.

The Commission on Alcohol and Drug Abuse for Marlboro and Chesterfield Counties was created by Act No. 730, 1973 Acts and Joint Resolutions. If, by the term "Director," you are referring to a member of the Commission, that person would most probably hold an office, as we advised you by letter dated January 11, 1985. If you are referring to an executive director, the individual most probably is an employee of the Commission. No provision is made for the position in Act No. 730; no oath, duties, tenure, qualifications, or salary are specified. In an analogous situation, by *Op. Atty. Gen.* No. 4000, dated March 19, 1975 (enclosed), retired Attorney General McLeod determined that an executive director of a county commission was an employee rather than an officer. As stated in *Sanders v. Belue*, [o]ne who merely performs the duties required of him by persons employing him under an express contract or otherwise, though such persons be themselves public officers, and though the employment be in or about a public work or business, is a mere employee.

78 S.C. at 174.

In summary, one who would concurrently serve on the Marlboro County school board and as executive director of the Commission on Alcohol and Drug Abuse for Marlboro and Chesterfield Counties most probably would not contravene the dual office holding prohibitions of the State Constitution.

Sincerely,

Patricia D. Petway  
Assistant Attorney General

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