

1990 WL 599332 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 19, 1990

**\*1** The Honorable Larry E. Gentry  
Member, House of Representatives  
Post Office Box 673  
Saluda, South Carolina 29138

Dear Representative Gentry:

By your letter of October 11, 1990, you have asked whether an individual may serve simultaneously on the governing body of the Saluda County Water and Sewer Authority and on the Ridge Spring-Monetta Advisory Council without violating the dual office proscriptions of the state Constitution.

Article XVII, Section 1A of the state Constitution provides that "no person may hold two offices of honor or profit at the same time ...," with exceptions specified for an officer in the militia, member of a lawfully and regularly organized fire department, constable, or a notary public. 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 previously examined the area advisory councils relative to the Aiken County Board of Education. In an opinion of this Office dated December 18, 1978, the history of the area advisory councils to that date was detailed; the opinion concluded that the area advisory councils were created to replace the area boards of education eliminated by Act No. 461 of 1967. Opinions dated November 12, 1974 and December 17, 1973 concluded that service on one of the area advisory councils would constitute an office for dual office holding purposes (copies enclosed).

Act No. 503 of 1982, as amended by Act No. 572 of 1984, repealed Act No. 461 of 1967, and in section 14 provides for area advisory councils. The Ridge Spring-Monetta representatives are to be appointed by the Saluda County Legislative Delegation from the top candidates of an advisory election. The appointees serve terms of four years. Section 15 of Act No. 503 of 1982 provides that area advisory councils are to determine policy in their respective areas, such policy not to be inconsistent with policies set by the Aiken County Board of Education. The county board may also delegate additional authority to the area advisory councils as may be necessary for effective operation of the area schools. In addition, area advisory councils are authorized to hear grievances of patrons in the administrative areas, appeal from which is to the county board. Notwithstanding the 1982 and 1985 legislative modifications, these area advisory councils would be so similar to the boards set up under the 1967 legislation that our previous opinions would still be valid. Thus, one who would serve on an area advisory council would hold an office for dual office holding purposes.

**\*2** The Saluda County Water and Sewer Authority was established by Act No. 1015 of 1970 to acquire supplies of fresh water and distribute same for industrial and domestic purposes. Section 2 provides that there are to be five members of the governing body, who are to be resident electors of Saluda County, appointed by the Governor upon the recommendation of the Saluda County Legislative Delegation. The members are to serve terms of six years and until their successors have been appointed and have qualified. Members receive no compensation but are authorized to be reimbursed for actual expenses incurred in the course of business, according to section 3 of the act. The act does not require that members take an oath.

Powers are enumerated in section 7 of the act and include the power to sue and be sued; to make bylaws; to build, operate, and maintain water systems and related facilities; to make contracts; to make rates and regulations; to exercise eminent domain; to borrow money and issue evidence of indebtedness; and many others. Clearly these powers involve an exercise of a portion of the sovereign power of the State.

Considering all of the foregoing, it is our opinion that one who would serve as a member of the Saluda County Water and Sewer Authority would hold an office for dual office holding purposes. Thus, simultaneous service on the Ridge Spring-Monetta Area Advisory Council by the same person would most probably constitute dual office holding in contravention of the state Constitution.

With kindest regards, I am  
Sincerely,

Patricia D. Petway  
Assistant Attorney General

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