

1978 WL 35040 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 11, 1978

*1 Mr. Charles F. Lee
State Historic Preservation Officer
S. C. Department of Archives and History
P. O. Box 11669
Columbia, SC 29211

Dear Mr. Lee:

Attorney General McLeod has referred your recent request for an Opinion to me for reply. You have inquired whether or not dual office holding would occur if the same individual served on the Governor's Mansion/Lace House Commission, an official state commission, and also served on an advisory board. The particular advisory board in question is the State Board of Review for the National Register of Historic Places.

You advised me that the State Board of Review is not created by State statute or other regulation, but is a Department of Interior requirement in order that a State may participate in the national historic preservation program under an act of Congress. The Board is appointed by the Director of the Department of Archives and History and the members are individuals with recognized ability in the areas of history, archeology and architecture. The duties of this State Review Board are to review and approve each application for national register status prior to submission of the application to the Department of Interior. I am advised that only the Department of Interior can make a final approval or disapproval of an application for national register status. Also, the Review Board provides general advice, guidance and professional recommendations to the State Historic Preservation Officer about the state-wide historic preservation program.

This Office has previously made a distinction between offices of honor or profit, subject to constitutional restrictions on dual office holding, and positions which are purely advisory. The critical distinction between whether an office is subject to constitutional restrictions on dual office holding is whether or not the holder of the position exercises some element of the state sovereign power on a continuing basis, and in an area in which the public is concerned. Traditionally, this has meant whether or not the holder of the office or position in question makes final decisions which constitute exercises of the State's sovereign powers. In the case you present, the State Board of Review is given authority only to review and approve one or more nominations prior to submission to the National Register at the Department of the Interior. The Review Board has no authority to determine the final status of an application.

Although the question is not entirely free from doubt, it is the Opinion of this Office that the State Board of Review is an advisory position and does not constitute an office subject to constitutional restrictions on dual office holding. The reason for this determination is that the position is not created by statute, the decisions of the Review Board are advisory, and no interests are finally affected until action is taken by the National Register at the United States Department of the Interior.

*2 I hope this information will be helpful to you, and with kind regards, I am
Sincerely,

George C. Beighley
Assistant Attorney General

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