

1975 WL 29744 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 22, 1975

\*1 Mr. J. Lee Spratt  
State Director  
South Carolina Office of Economic Opportunity  
Post Office Box 1520  
Columbia, South Carolina 29205

Dear Mr. Spratt:

This is in response to your request for our opinion concerning the legality of the constitution and composition of the Human Relations Development Commission for Dillon and Marion Counties, created by Act No. 1397, Acts and Joint Resolutions of the General Assembly of South Carolina, 1974.

Specifically, your question is directed to the point of whether or not the provision of the organic law creating the Commission, which provides that one-third of its members shall be elected public officials, affects the validity of the acts of the Commission.

I have expressed the opinion that the Act is not sufficient to create an ex officio status of membership participation by persons occupying another office under the laws of this State. This conclusion is based on the provision of our Constitution which provides that no person shall at the same time occupy more than one office of honor, trust or profit under the laws of this State.

It is my opinion that the provision for membership upon the Commission of public officials is not, per se, violative of any of the laws of this State. In its application, it may be that a particular official may be violating the provision of our Constitution against dual officeholding but, in such event, the acts and doings of such an official are valid and legally binding until an adjudication is made thereon and until that particular official is determined to have been dual officeholding and until the dual officeholding circumstances are eliminated. In short, the Supreme Court of this State has clearly held that one who occupies two offices at the same time must continue in his offices until his successor shall have been appointed and has qualified. In the interim period he must continue to serve as a functioning official. During this period, the actions taken by the Commission are valid and legally binding irrespective of any conclusion that a dual officeholding circumstance may exist.

The matter of dual officeholding is a completely separate issue insofar as the acts and doings of the Commission as a public body are concerned. The Commission properly functions as a legally created body and if, for any reason, one or more of its membership may be found to be not qualified to serve as members, such determination would not affect the validity of the proceedings of the Commission.

Very truly yours,

Daniel R. McLeod  
Attorney General

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