

1975 WL 29121 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 4, 1975

\*1 Joseph I. Hungate, Jr., Ph.D.

Dean

College of Social Work

DeSaussure College

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Columbia, South Carolina 29205

Dear Joe:

Thank you for your letter of August 28, 1975, concerning the status of a faculty member of the University who accepts a position with a governmental agency.

The significant thing to note is that the constitutional provision against holding two offices of honor, trust or profit at the same time is applicable only to 'offices' as that term is used in the Constitution. There is no precise definition of an office laid down in the cases; a case by case analysis is usually required; inquiries usually arise in a political context; and, in many instances, the borderline circumstances present issues which only court adjudication can finally determine. The commonly accepted indicia appear to be, however, that a position is an office if it is created by law, if its duties require the exercise of a sovereign function, and those duties are not intermittent or transitory.

I have always considered and have issued opinions to the effect that a faculty member of an institution, such as the University, is not an officer within the meaning of the constitutional provision and that therefore he may accept another position which may be such an office without violating the dual officeholding provision. With due deference, the position of faculty member or dean is a subordinate administrative position which can more properly be classed as an employment as opposed to 'office.'

In this view, there is nothing to prevent you from accepting and serving as a member of the board to which you refer, irrespective of whether that constitutes an office. If you should accept appointment to another office, this action would have the effect of causing a vacancy of the first in that two offices are involved. The vacancy referred to is not a physical abdication but the individual continues holding in a de facto capacity until the vacancy is filled in the manner provided by law.

The Governor's Committee is still stumbling along but it sorely needs your guiding influence.

With best wishes,

Cordially,

Daniel R. McLeod

Attorney General

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