

1975 S.C. Op. Atty. Gen. 185 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 4108, 1975 WL 22404

Office of the Attorney General

State of South Carolina

Opinion No. 4108

September 4, 1975

*1 Mr. Paul Weldon

Deputy Commissioner for Program Services

S. C. Department of Corrections

Post Office Box 766

4444 Broad River Road

Columbia, South Carolina 29202

Dear Mr. Weldon:

Your letter of July 30, 1975, requests the opinion of this Office as to whether you may be appointed as a member of the Community Health Board of Columbia while at the same time serving as Deputy Commissioner of the Department of Corrections.

The prohibition of the State Constitution is directed against the holding of two offices of honor, trust or profit at the same time; if neither position constitutes an 'office', as that term is used in the Constitution, the dual officeholding provision is not violated. On the other hand, if both positions constitute offices, then the acceptance of one causes a vacation of another previously held.

It is my opinion that your position as Deputy Commissioner is not an office but is an employment as contra distinguished therefrom. It is not created by law but by virtue of administrative procedure, and your duties insofar as I can ascertain do not involve the exercise a portion of the sovereign power. These two indicia are not the only guides as to whether a position is or is not an office, but they are essential thereto, and each of these, in my opinion, is lacking in the position of Deputy Commissioner of the Department of Corrections.

On the other hand, the Community Mental Health Boards established pursuant to Section 32-1034.26, Code of Laws, 1962, as amended, constitute 'offices' within the meaning of the constitutional provision. The indicia referred to are present in regard to membership upon such boards.

I therefore advise that you may accept membership upon a Community Mental Health Board created pursuant to the Code provisions referred to without violating the provisions of the dual officeholding sections of the Constitution by retaining your employment as Deputy Commissioner for Program Services, South Carolina Department of Corrections. Very truly yours,

Daniel R. McLeod

Attorney General

1975 S.C. Op. Atty. Gen. 185 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 4108, 1975 WL 22404