

1975 S.C. Op. Atty. Gen. 196 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 4126, 1975 WL 22422

Office of the Attorney General

State of South Carolina

Opinion No. 4126

September 22, 1975

**\*1** Membership on the Advisory Committee on Programs for the Handicapped does not constitute an 'office' subject to constitutional restraints on dual office holding.

TO: Robert H. White

Executive Director

South Carolina Advisory Council on Vocational and Technical Education

#### QUESTION PRESENTED:

Can the same individual serve as a member of the South Carolina Advisory Council on Vocational and Technical Education and the Advisory Committee for Programs for the Handicapped at the same time?

#### STATUTES, CASES, ETC:

South Carolina Constitution, Article XVII, Section 1A; Sanders, et al. v. Belue, et al., 78 S. C. 171, 56 S. E. 762; [Edge v. Town of Cayce](#), 187 S. C. 172, 197 S. E. 216; [Ashmore v. Greater Greenville Sewer District](#), 211 S. C. 77, 44 S. E. 2d 88; 20 USCS § 1244; 20 USCS § 1413.

#### DISCUSSION OF ISSUES:

Article XVII, Section 1A of the South Carolina Constitution provides that no person shall hold two offices of honor or profit at the same time.

Whether dual office holding occurs ?? the instant situation requires an examination of the State Advisory Committee for Programs for the Handicapped to see if membership thereon constitutes an office. The Supreme Court defined public officer in [Sanders v. Belue](#), 78 S. C. 171, 58 S. E. 762, as follows:

'One who is charged by law with duties involving an exercise of some part of the sovereign power, either small or great, in the performance of which the public is concerned, and which are continuing, and not occasional or intermittent, is a public officer.' [Emphasis Added]

The Advisory Committee for Programs for the Handicapped was formed by the Department of Education to aid the Department in evaluating programs for the handicapped. Such a committee is suggested but not required by the guidelines put out by the Federal Government for administration of federal funds to aid the handicapped. The committee also has assumed an advisory role in state-funded handicapped programs.

Clearly such a function is purely advisory, as the name implies. There are no duties defined by law nor is there any exercise of the sovereign power of this state. On this basis membership on the Advisory Committee for Programs for the Handicapped is not an office subject to the constitutional prohibition on dual office holding.

CONCLUSION:

Since membership on the Advisory Committee for Programs for the Handicapped is not an office, no conflict exists between such membership and membership on the Advisory Council on Technical and Vocational Education.

George C. Beighley  
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