

1975 WL 29182 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

November 12, 1975

*1 Membership on the South Carolina Development Disability Council is not an office within the constitutional proscriptions on dual office holding.

TO: Mrs. Barbara Sylvester
member of S. C.
Youth Services Commission

QUESTION PRESENTED:

Does the position as member on the S. C. Development Disability Council constitute an office within the constitutional sense?

STATUTES, CASES, ETC:

South Carolina Constitution, Article XVII, Section 1A and Article VI, Section 3;

[Sanders, et al. v. Belue, et al.](#), 78 S. C. 171, 58 S. E. 762;

[Edge v. Town of Cayce](#), 187 S. C. 172, 197 S. E. 216;

DISCUSSION OF ISSUES:

Article XVII, Section 1A and Article VI, Section 3, of the South Carolina Constitution provide that no person shall hold two offices of honor or profit at the same time. An office has been defined by the South Carolina Supreme Court in Sanders case, supra, 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.

The South Carolina Development Disability Council was created by executive order of former Governor McNair, and renewed by executive order of former Governor West on September 10, 1971. Governor Edwards has never renewed or issued a similar order.

The previous opinion of this Office has been that a member of an organization created by Executive Order is not an officer unless there is state statutory or constitutional authority for such action by the Governor. No such authority has been found authorizing the creation of a Development Disability Council by executive order of the Governor.

Even if such state statutory or constitutional authority were found to exist, it would require that the order be reaffirmed by the succeeding Governor, because the force and effect of the prior executive order would expire with the term of the preceeding Governor.

The need for the Development Disability Council is based on [42 U. S. C. 6067](#), which requires the Governor to appoint members to make up a State Council. Such procedure is a prerequisite for receipt of federal funds, which is the entire source of revenue for the Council.

Such findings therefore indicate that the S. C. Development Disability Council was established simply as an arm of the Governor's office designed to make the state eligible for certain federal funds and to help administer these funds. Even if a new Order were issued recreating the Council, a position on such council would not be an office because the office is not 'charged by law with the duties involving an exercise of some part of the sovereign power . . .' Sanders, supra. It is the opinion of this office that an executive order of the Governor does not qualify under the term 'charged by law' since it is of no force and significance from a legal standpoint if it is issued without specific statutory authority.

*2 Therefore a position created at the discretion of the Governor and alterable at his will is considered merely an organizational arm of the Governor's Office for administrative purposes and is not a legal entity or office.

CONCLUSION:

Membership on the S. C. Development Disability Council is not an office subject to the constitutional restrictions on dual office holding.

See also attached Atty. Gen. Op. of August 19, 1975.

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Staff Attorney

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