

1975 S.C. Op. Atty. Gen. 250 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 4203, 1975 WL 22500

Office of the Attorney General

State of South Carolina

Opinion No. 4203

November 26, 1975

***1** The position of President of South Carolina State College is not an office subject to constitutional restrictions on dual officeholding.

TO: Daniel R. McLeod
Attorney General

QUESTION PRESENTED:

Does the position of President of South Carolina State College constitute an office subject to constitutional restrictions on dual officeholding?

STATUTES, CASES, ETC.:

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

Code of Laws of South Carolina, 1962, Sections 22–551, et seq., as amended;

[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;

[Martin v. Smith](#), 239 Wis. 314, 1 N.W.2d 163;

[Pardue v. Miller](#), 306 Ky. 110, 206 S.E.2d 75;

[Burton v. State Appeal Board](#), 38 Wis.2d 294, 156 N.W.2d 386.

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 the 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.

Sections 22–551, et seq., of the Code of Laws places the management and control of South Carolina State College in the hands of its Board of Trustees. The statute does not establish or mandate establishment of the position of college

president nor does it set out any duties for such position. Therefore, the creation of the college presidency was at the discretion of the Board of Trustees, and its existence, duties and term of office are at the Board's discretion.

The legal encyclopedias indicate the position of college president is not an office. The case most often relied on for this determination is [Martin v. Smith](#), 239 Wis. 314, 1 N.W.2d 163. Martin examined the position of college president in light of a constitutional prohibition against simultaneous state and federal officeholding. In the Martin case, state law created the position of university president, provided for its election and duties, and subjected the position to the supervision of the board of regents. Even so, no office was found subject to the constitutional restrictions, based on the following reasoning:

The President . . . being subject in all things to the action of the Board of Regents, it is the Board . . . and not the President that exercises some part of the sovereign authority of the state. The President . . . is a subordinate of the Board . . . in executing and carrying out the policies and laws laid down by it . . . He is an employee, not a public officer.

The Martin result was cited with approval in [Pardue v. Miller](#), 306 Ky. 110, 206 S.W.2d 75, where the court found that the President of the University of Kentucky was an employee and not an officer. The Martin criteria for determining office or employment was reaffirmed in 1968 in [Burton v. State Appeal Board](#), 38 Wis.2d 294, 156 N.W.2d 386.

*2 Based on such reasoning, it appears that the Sanders, supra, definition of dual officeholding would not be satisfied in the instant case. Such a determination is based on the fact that the position and its duties are not created by law. Also, there is a real question whether the president exercises sovereign power on a continuing basis, or merely executes the policies approved and ordered by the Board of Trustees.

CONCLUSION:

The position of President of South Carolina State College is not an office subject to constitutional restrictions on dual officeholding.

George C. Beighley
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