

1974 S.C. Op. Atty. Gen. 130 (S.C.A.G.), 1974 S.C. Op. Atty. Gen. No. 3759, 1974 WL 21274

Office of the Attorney General

State of South Carolina

Opinion No. 3759

April 22, 1974

**\*1 RE: Bill 00868**

Mr. Dan Dobbins  
South Carolina Parks, Recreation and Tourism  
Post Office Box 1358  
Columbia, South Carolina 29202

Dear Mr. Dobbins:

With respect to Bill 00868, 'To Create The New Horizons Development Authority,' you have asked two questions. First, Section 2 of the Bill provides for the appointment of the Board, including ' . . . three members by the Governor, one of whom shall be a member of the State House of Representatives, one of whom shall be a member of the State Senate . . . ' You question whether or not the members of the House and Senate would be occupying dual offices within the meaning of prohibition contained in Article 6, Section 3 and Article 17, Section 1A of the Constitution of South Carolina. It is the opinion of this office that holding positions in either the House of Representatives or the Senate and serving on the proposed Board would be holding two offices of honor or profit, since the functions of both positions involve exercising the sovereign power of the State. See, [Sanders v. Belve](#), 78 S.C. 171 (1907).

In the event that the above was considered to be dual office holding, you asked how members of the House of Representatives and the Senate could be allowed to serve on the Board and inquired as to whether they might serve as ex officio members of the Board.

The rule here enforced with respect to double or dual office holding in violation of the constitution is not applicable to those officers upon whom other duties relating to their respective offices are placed by law. A common example is ex officio membership upon a board or commission of the unit of government which the officer serves in his official capacity, and the functions of the board or commission are related to the duties of the office. [State ex rel. Ray v. Blease](#), 95 S.C. 403, 79 S.E. 247, 249, 46 C.J. 934, 42 Am. Jur. 929. Ex officio means 'by virtue of his office.' 1 Bouv., Law Dict. Rawles' Third Revision, page 1103. Similar observation may be made with respect to ex officio membership upon a governing board, commission or the like of an agency or institution in which the unit of government of the officer has only a part of joint ownership or management. In mind as an example is an airport operated by two or more units of government. A governing board of it might be properly created by appointment ex officio of officers of the separate governmental units whose duties of their respective officers have reasonable relation to their functions ex officio. [Ashmore v. Greater Greenville Sewer Dist.](#), 211 S.C. 77, 92, 44 S.E. 2d 88 (1947)

In light of the [Ashmore](#) case, then, to insure that the members of the House of Representatives and Senate who serve on the proposed Board serve 'by virtue of [their] office[s],' they should be members of either the Committee on Parks, Recreation and Tourism or the Commerce and Manufactures Committee of the Senate or the Labor, Commerce and Industry Committee of the House. This list of committees to which a House or Senate member may serve on and still be a member ex officio is not exclusive. The Representative or Senator could be an ex officio member of the Board as long as he was on a committee in the House or Senate which deals with one of the general purposes of the Board as defined by Section 6 of the Bill.

Yours very truly,

\*2 M. Elizabeth Crum  
Staff Attorney

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