

1973 WL 26987 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

November 30, 1973

*1 Honorable Robert Scarborough
Box 855
Charleston, South Carolina 29402

Dear Bobby:

You have inquired as to whether you may serve as a member on the permanent Committee on Drug Abuse and at the same time serve as a member of another governmental entity, the latter of which constitutes an 'office' within the meaning of the dual officeholding provision of the State Constitution.

The permanent Committee on Drug Abuse was created by an act enacted in 1971 and now codified as Section 32-1510.11 of the Code of Laws of 1962 (Cum.Supp.). The membership of the Committee consists of three members appointed by the Speaker of the House, three appointed by the President of the Senate from the memberships of those two bodies and three appointed by the Governor. The terms of committee members are coterminous with the terms of office of legislative members and the Governor's appointees serve terms of two years.

The Committee is charged with the duty of 'making a continuous study of narcotics and drug abuse, the illicit traffic therein, maintain constant and continuous surveillance over the implementation of the State's drug program so as to avoid duplication of effort by the involved State agencies and secure for the adopted comprehensive State drug and narcotics plan maximum cooperation, coordination and effectiveness between and among the participating agencies so as to bring the drug problem under control and reduce the abuse of drugs and narcotics.

The Committee meets on call of the chairman or a majority of the members, is required to make an annual report to the General Assembly and is authorized to employ such assistance as necessary from appropriations made available to it by the General Assembly.

In my opinion, membership upon this Committee does not constitute an office. There are many indicia of an office which are present in these circumstances such as having been created by law with the terms of office being fixed. On the other hand, a principal earmark of office is lacking in that there is no authority for the exercise of a portion of the sovereignty of the State; on the contrary, the Committee is advisory only and is possessed of no real authority.

Moreover, the General Assembly appeared to recognize that the position was not an office because it provided in the organic law that 'none of the Governor's appointees shall be members of the General Assembly.' If the positions created were offices, as that term is used in the Constitution of this State, there would have been no necessity to preclude the Governor from appointing members of the General Assembly to the Committee as the dual officeholding provision of the Constitution already prohibited such appointment. It appears that the General Assembly recognized that members of the General Assembly would be otherwise eligible and would not thereby violate the dual officeholding provision of the Constitution but chose to preclude the practice as a matter of policy.

*2 I, therefore, advise that in my opinion you are not holding an office within the meaning of the dual officeholding provision of the Constitution of this State while serving as a member of the Committee on Drug Abuse and may, therefore, accept another office without thereby violating such constitutional provisions.

With best wishes,
Very truly yours,

Daniel R. McLeod
Attorney General

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