

1972 S.C. Op. Atty. Gen. 64 (S.C.A.G.), 1972 S.C. Op. Atty. Gen. No. 3266, 1972 WL 20412

Office of the Attorney General

State of South Carolina

Opinion No. 3266

February 28, 1972

\*1 The Honorable John H. Williams

Member

House of Representatives

Aiken County

Post Office Box 463

Aiken, South Carolina 29801

Dear Mr. Williams:

Think you for your letter of February 22, 1972, inquiring as to whether city officials who are named as members to the Lower Savannah Regional Planning and Development Commission may constitutionally hold such offices.

You inquire further as to whether a member of the Legislative Delegation may serve upon that Commission without violating any constitutional provision.

The Commission is a Regional Council of Government created pursuant to Article 7, Section 15 of the Constitution of this State, as amended in 1971. The constitutional provision authorizes the General assembly to empower counties and municipalities to create Regional Councils of Government for designated purposes and provides

‘The prohibitions against dual officer-holding—of (the State) constitution shall not apply to any elected or appointed official or employee of government who serves as a member of a Regional Council.’

Implementation of the Constitutional provision is found in Act No. 363 (71 Acts 485), which provides that the member counties and cities shall provide for representation of members on the policy making body of the Regional Council of Government—as prescribed in the agreement creating the Regional Council of Government. The Act, moreover, provides that a majority of the members of the policy making body shall be members of the governing bodies of the participating cities and counties.

So far as the Mayor and members of Council are concerned, it is my opinion that no dual officeholding provision is infringed by reason of the express authority contained in the amendment to the Constitution. Nor do I find that any other provision of the Constitution is called into play, in that the separation of powers provision of the Constitution is not applicable to county government.

So far as membership upon the Regional Council by members of the Legislature is concerned, there exists in my mind some doubt as to whether membership of members of the Legislature is contemplated by the amendment or by the implementing statute. Both of these laws relate specifically to the governing bodies of counties and municipalities and the legislative participation extends necessarily no further than the act of empowering the formation of Regional Councils of Government. There is no restriction specifically made with respect to designation of legislative members of Regional Councils of Government, but when this is contrasted with the constitutional requirement imposed upon the legislative branch that the separate divisions of government be kept separate, it is somewhat doubtful that the constitutional amendment and the implementing legislation were intended to authorize members of the Legislature to serve upon the Regional Councils of Government. It is my view that the two provisions must be construed to be compatible with pre-existing provisions of the State Constitution insofar as practicable

and, viewed in this light, it would require a construction precluding membership of legislators upon Regional Councils of Government.

\*2 If, however, the amendment and the statute are construed to authorize membership by legislative officials, then the effect is, in my opinion, to carve an exception in this respect to the constitutional provision providing for the separation of powers. See [Bray v. City Council](#), 62 S.C. 57.

In summary, it is my opinion that the Lower Savannah Regional Planning and Development Commission is a Regional Council of Government and that it is not the intent of the legislation authorizing the formation of such Councils that members of the Legislature act as members thereof. If this construction is not correct, it is my opinion that legislative members may participate upon such Regional Councils without offending the dual officeholding provision of the Constitution or the provision of the Constitution requiring the separation of powers of government.

With best wishes,  
Very truly yours,

Daniel R. McLeod  
Attorney General

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