

The State of South Carolina



Office of the Attorney General

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February 8, 1991

The Honorable J. Roland Smith
Member, House of Representatives
310-A Blatt Building
Columbia, South Carolina 29211

Dear Representative Smith:

By your letter of January 16, 1991, you have inquired about a federal law which prevented members from municipal election commissions also serving as poll managers, citing the inconvenience that law caused in Aiken County. Our research has failed to turn up any federal law such as you have described. The State Constitution does have several provisions which would affect the situation, however.

Article XVII, Section 1A of the state Constitution provides that "no person may hold two offices of honor or profit at the same time . . .," with exceptions specified for an officer in the militia, member of a lawfully and regularly organized fire department, constable, or a notary public. For this provision to be contravened, a person concurrently must hold two public offices which have duties involving an exercise of some portion of the sovereign power of the State. Sanders v. Belue, 78 S.C. 171, 58 S.E. 762 (1907). Other relevant considerations are whether statutes, or other such authority, establish the position, prescribe its tenure, duties or salary, or require qualifications or an oath for the position. State v. Crenshaw, 274 S.C. 475, 266 S.E.2d 61 (1980). See also Article VI, § 3 and Article III, § 24 of the Constitution.

This Office has concluded on several occasions that a poll manager would hold an office for dual office holding purposes. See, for example, an opinion of this Office dated October 25, 1984, enclosed.

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Similarly, this Office has advised on several occasions that a member of an election commission would hold an office for dual office holding purposes. See, as examples, Ops. Atty. Gen. dated September 12, 1990 (Florence County Election Commission); July 24, 1980 (Greenville City Election Commission); and June 5, 1981 (City of Woodruff Election Commission), copies of which are enclosed.

Based on the foregoing, it is our opinion that a member of a county or municipal election commission could not also serve as a poll manager without contravening the dual office holding prohibitions of the State Constitution. To change this conclusion, the Constitution would require amendment. There is no federal law applicable in this instance.

With kindest regards, I am

Sincerely,

Patricia D. Petway
Patricia D. Petway
Assistant Attorney General

PDP/an

Enclosures

REVIEWED AND APPROVED BY:

Robert D. Cook

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