

6848 Liberty



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON
ATTORNEY GENERAL

January 17, 2000

Clarence Dickert, Member
State Board of Education
1011 Rutledge Building
Columbia, South Carolina 29201

Re: Informal Opinion

Dear Mr. Dickert:

By your letter of January 12, 2000, you have asked whether a dual office holding situation would exist if a member of the State Board of Education were to serve simultaneously on the Edgefield County Hospital Board.

As you know, Article XVII, Section 1A of the South Carolina 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, a member of a lawfully and regularly organized fire department, constable, or a notary public. As concluded by Attorney General Daniel McLeod in an opinion dated April 26, 1977, "[t]o determine whether a position is an office or not depends upon a number of circumstances and is not subject to any precise formula." The South Carolina Supreme Court, though, has held that for this provision to be contravened, a person concurrently must hold two 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). "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." Id., 78 S.C. at 174. Other relevant considerations, as identified by the Court, are whether statutes, or other 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).

This Office has previously advised that a member of the State Board of Education would be considered an office holder for dual office holding purposes. *See* Ops. Atty. Gen.

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dated October 23, 1995 and November 27, 1985, copies of which are enclosed. Thus, it must be determined whether membership on the Edgefield County Hospital Board would likewise constitute an office.

This Office advised, by an opinion dated January 9, 1992, (copy enclosed) that an individual who serves on the Edgefield County Hospital Board would hold an office for dual office holding purposes. Accordingly, it is the opinion of this Office that one who would serve simultaneously on the State Board of Education and as a member of the Edgefield County Hospital Board would most probably contravene the dual office holding prohibitions of the State Constitution.

I trust this information is responsive to your inquiry and that you will not hesitate to contact me if I can be of additional assistance. This letter is an informal opinion only. It has been written by a designated Deputy Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I am

Sincerely yours,



Zeb C. Williams, III
Deputy Attorney General

ZCW/an

Enclosures

cc: George C. Leventis, Esq.