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The State of South Carolina



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October 5, 1993

The Honorable Barbara Stock Nielsen
State Superintendent of Education
1429 Senate Street
Columbia, South Carolina 29201

Dear Dr. Nielsen:

By your letter of September 16, 1993, you have asked whether an individual could serve concurrently as a member of the State Board of Education and on a School Improvement Council without violating the dual office prohibitions of the state Constitution. You have also asked whether a member of a School District Board of Trustees may serve concurrently as a member of a Peer Review Team in another school district without violating the dual office holding prohibitions of the state Constitution.

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).

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. dated November 27, 1985 and May 3, 1971, copies of which are enclosed. This Office has previously advised that a member of a school advisory council would not be considered an office holder, due to the advisory nature of the position. See Op. Atty. Gen. dated May 3, 1978, copy enclosed. School advisory councils are now called School Improvement Councils; while the relevant statute (S.C. Code Ann. § 59-20-60(3)) has been amended by Act No. 135, 1993 Acts and Joint Resolutions, and is now § 59-20-

Respectfully,

The Honorable Barbara Stock Nielsen

Page 2

October 5, 1993

60(6),¹ the amendments would not cause our previous opinion to be changed. Based on the foregoing, from the perspective of dual office holding, it is our opinion that an individual may serve concurrently on the State Board of Education and on a School Improvement Council without violating the dual office prohibitions of the state Constitution.

This Office has also generally advised that an individual who would serve on a school district board of trustees would hold an office for dual office holding purposes. See, as an example of numerous opinions, Op. Atty. Gen. dated November 1, 1991, a copy of which is enclosed. It must thus be determined whether a member of a peer review team would be considered an office holder.

As a part of the Early Childhood and Academic Assistance Act, Act No. 135 of 1993, the State Board of Education is to develop and promulgate regulations toward each school district's design of a comprehensive, long-range plan to carry out the purposes of the Act. The plan to be submitted thereunder by a given district is first to be subjected to a peer review process. See § 59-139-10(H), which states that the Department of Education is to "implement a process whereby groups of peers are selected and provided appropriate reviewer training. Teams of peers must be convened for the purpose of reviewing the plans."

Reviewing § 59-139-10(H), it is clear that the statute requires peer review teams to be established; however, § 59-139-10(H) does not itself establish such a position, prescribe qualifications to be met by the holder thereof, or provide for tenure, an oath, or compensation. Thus, the indicia of an office appear to be lacking as to an individual who would serve on a peer review team.

Based on the foregoing, one who would serve as a school district trustee and as a member of a peer review team in another district would not likely contravene the dual office holding prohibitions of the state Constitution.²

¹See also new § 59-139-10(G), added to the Code by Act No.135 of 1993, which requires input into the school district's comprehensive, long-range plans by school improvement councils. Members of the State Board of Education who would consider offering for a school improvement council should consider whether there would be any conflict of interest in carrying out their responsibilities in each position.

²Due to the relationship of the peer review team to the school district in the planning process, a potential for conflict of interest could result if the school district trustee were
(continued...)

The Honorable Barbara Stock Nielsen

Page 3

October 5, 1993

We trust that the foregoing adequately responds to your inquiry. Please advise if clarification or additional assistance should be needed.

With kindest regards, I am

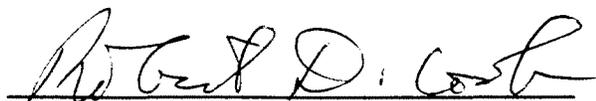
Sincerely,



Patricia D. Petway
Assistant Attorney General

PDP/an
Enclosures

REVIEWED AND APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions

²(...continued)

to serve on the peer review team in the same school district. Such a conflict does not appear, on the face of the statutes, if two school districts are involved.