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The State of South Carolina



Office of the Attorney General

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September 10, 1993

Bob Bartles, Executive Director
Richland/Lexington Mental Retardation Board
Post Office Box 3547
Columbia, South Carolina 29230-3547

Dear Mr. Bartles:

By your letter of August 31, 1993, you have asked whether an individual may serve simultaneously on the Richland/Lexington Board of Disabilities and Special Needs (formerly Mental Retardation Board) and on the Governor's Nuclear Advisory Council, the Southeast Interstate Low Level Radioactive Waste Management Compact Advisory Committee, and the Nuclear Waste Consultation Committee 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 opined that one who would serve on a county or multi-county mental retardation board (now board of disabilities and special needs) would hold an office for dual office holding purposes. See Op. Atty. Gen. dated April 10, 1989. The same conclusion would apply to the Richland/Lexington Board of Disabilities and Special Needs.

Seamus L. Latta

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The Governor's Nuclear Advisory Council was established pursuant to S.C. Code Ann. 13-7-810 et seq. (1976 & 1992 Supp.). Membership on the Council is prescribed by § 13-7-840, to consist of five members, appointed by the Governor, who are to have the stated qualifications (experience and/or involvement in environmental protection, nuclear engineering, etc.). Terms are to be coterminus with that of the appointing Governor, but members serve at the pleasure of the Governor. No oath is required. Members are entitled to receive compensation "as provided by law for boards and commissions," by § 13-7-850. Duties are listed in § 13-7-820 and include providing advice and recommendations to the Governor on issues related to nuclear materials and various federal programs vis a vis South Carolina law. Since the duties are advisory in nature, an exercise of sovereign power is not involved. While membership meets several of the criteria usually found in an office, it is our opinion that the advisory nature of the position would be sufficient reason to conclude that membership on the Governor's Nuclear Advisory Council would not constitute an office.

The Southeast Interstate Low Level Radioactive Waste Management Compact was created by S.C. Code Ann. § 48-47-10 et seq. An advisory committee related thereto was created by § 48-47-330(C); membership is specified therein, to include inter alia two members of the Governor's Nuclear Advisory Council. No term of office is provided by statute; terms are most probably considered to be at the pleasure of the appointing entity or coterminous with the term of the position held from which ex officio membership on the advisory committee is derived. No oath is required. There is no provision for compensation of members. The duties to be exercised by advisory committee members, according to § 48-47-330(C), are advisory in nature: to "consult with and advise the state's representative to the Compact Commission concerning technical and policy matters." These duties are advisory in nature and lack an exercise of sovereign power. Membership on the advisory committee lacks almost all of the criteria usually found in an office. Thus, we are of the opinion that membership on the Southeast Interstate Low Level Radioactive Waste Management Compact Advisory Committee would not constitute an office.

The Nuclear Waste Consultation Committee was created pursuant to Act No. 539 of 1984. The composition of the Committee is specified in section 2 of the act and is largely ex officio; two members are appointed by the Governor and serve at the pleasure of the Governor. No oath is required. No compensation is to be paid, but members are allowed "the usual mileage, per diem, and subsistence provided by law for members of boards, committees, and commissions." The Committee is to study, report, and make recommendations to the General Assembly concerning management and disposal in South Carolina of high-level radioactive and transuranic waste and spent nuclear fuel, in consultation with federal officials. Since the duties are advisory in nature, an exercise of

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sovereign power is not involved. Because a number of criteria usually found in an office are lacking here, we are of the opinion that membership on the Nuclear Waste Consultation Committee is not an office.

Based on the foregoing, it is our opinion that an individual may serve simultaneously on the Richland/Lexington Board of Disabilities and Special Needs and on the Governor's Nuclear Advisory Council, the Southeast Interstate Low level Radioactive Waste Management Compact Advisory Committee, and the Nuclear Waste Consultation Committee without violating the dual office holding prohibitions of the state Constitution.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

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REVIEWED AND APPROVED BY:



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Executive Assistant for Opinions