



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

October 30, 1995

Mr. Jeff Jefcoat
1023 Highway 202
Little Mountain, South Carolina 29075

RE: Informal Opinion

Dear Mr. Jefcoat:

By your letter of October 24, 1995, to Attorney General Condon, you have sought an opinion as to whether you might serve as a member of the Newberry County Transportation Committee and as a member of the Jesse Frank Hawkins Nursing Home Board of Commissioners without violating the dual office holding prohibitions of the State Constitution.

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, 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 advised, in an opinion dated July 28, 1993, that it appears that a member of a county transportation committee would hold an office for dual office holding purposes. A copy of that opinion is enclosed herewith. Thus, it must be determined whether membership on the Jesse Frank Hawkins Nursing Home Board of Commissioners would be deemed an office for dual office holding purposes.

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The Jesse Frank Hawkins Nursing Home Board of Commissioners was initially created by Act No. 679, 1965 Acts and Joint Resolutions. As created by the General Assembly, the Commission was to be composed of seven members appointed by the Governor upon the recommendation of the legislative delegation of Newberry County; I understand that the commissioners are now appointed by Newberry County Council. The term was set at four years. Duties are specified in section 2 of the Act:

The commission is charged with the duty of formulating policies for the operation of the nursing home and shall employ all personnel. The commission may promulgate such rules and regulations as it deems necessary relating to the operating of the nursing home.

Employing personnel and promulgating rules and regulations and policies are among duties which would be considered an exercise of a portion of the sovereign power of the State. Section 4 of the Act authorizes members of the commission to be paid per diem and mileage as authorized for members of boards, commission, and committees. The only attributes usually found in an office but lacking here are the requirement that an oath be taken and the specification of qualifications to be met by commission members; arguably, an oath would be required by Article VI, Section 5 of the State Constitution, and Article XVII, Section 1 of the State Constitution would require that a member of the Commission be a resident of Newberry County.

Based on an analysis of the provisions of Act No. 679 of 1965, I am of the opinion that one who would serve on the Jesse Frank Hawkins Nursing Home Board of Commissioners would most probably hold an office for dual office holding purposes. I am aware that Newberry County Council has taken over the appointment process for members of this commission; if Newberry County Council has adopted an ordinance which has altered the provisions of Act No. 679 of 1965, such would necessitate the reconsideration of the conclusion reached herein. If such an ordinance exists, I will be happy to reconsider the conclusion of this informal opinion.

Based on the foregoing, I am of the opinion that service on the Newberry County Transportation Committee and on the Jesse Frank Hawkins Nursing Home Board of Commissioners simultaneously would most probably constitute dual office holding in violation of the State Constitution.

This letter is an informal opinion only. It has been written by a designated Senior Assistant Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

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With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Senior Assistant Attorney General

Enclosure