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# The State of South Carolina



## Office of the Attorney General

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January 22, 1993

The Honorable John R. Russell  
Senator, District No. 12  
P. O. Box 5524  
Spartanburg, South Carolina 29304

Dear Senator Russell:

By your letter of January 6, 1993, you have asked whether a constituent might serve on a technical college board and as an elected county official simultaneously without contravening the dual office prohibitions of the State Constitution. Your office clarified that the positions in question are (1) member of the Midlands Technical College Board and (2) county treasurer.

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 advised by an opinion dated October 1, 1990 (copy enclosed) that one who would serve on the Richland-Lexington Counties Commission for Technical Education (known as the Midlands Technical College board) would hold an office for dual office holding purposes. See also Ops. Atty. Gen. dated February 15, 1984 and December 10, 1981. This Office has previously stated that a county treasurer is an office holder, as well. Op. Atty. Gen. dated February 27, 1956 (copy enclosed). Thus, one who

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would serve on the Midlands Technical College Board and as a county treasurer would most probably contravene the dual office holding provisions of the State Constitution.

As we have concluded that this would most probably be a dual office holding situation, you have asked to be advised whether the individual may continue to serve on the board until his successor is appointed or elected. (It is noted that the individual would not assume the duties of county treasurer until the term begins on July 1, 1993. See S.C. Code Ann. § 4-11-10.) Your precise question was addressed in the opinion of October 1, 1990 as discussed above. Assuming that the bylaws of the board have not changed since that opinion was rendered, continued service as a de facto officer until one's successor is selected is permissible.

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

With kindest regards, I am

Sincerely,



Patricia D. Petway  
Assistant Attorney General

PDP/an  
Enclosures

REVIEWED AND APPROVED BY:



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Executive Assistant for Opinions