



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

November 24, 1997

T. Graham Edwards, President and Chief Executive Officer
Santee Cooper
Post Office Box 2946101
Moncks Corner, South Carolina 29461-2901

RE: Informal Opinion

Dear Mr. Edwards:

Attorney General Condon has forwarded your opinion request to me for reply. You have asked whether serving as a member of the Francis Marion University Board of Trustees while simultaneously serving as President and Chief Executive Officer of Santee Cooper would violate the dual office holding prohibitions of the South Carolina 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 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 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 stated that one who would serve as an elected member of the Board of Trustees of Francis Marion would hold an office for dual office holding purposes. Op. Atty. Gen. dated January 11, 1991.

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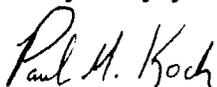
As to the position of President and Chief Executive Officer of Santee Cooper, an examination of the statutes relative to Santee Cooper, S.C. Code Ann. § 58-31-10 et seq., reveals no statute which creates the position of President and Chief Executive Officer of Santee Cooper. Pursuant to Section 58-31-60, the board of directors shall fix and determine the number of officers, agents, employees and servants and their respective compensation and duties, and may delegate to one or more of their number, or to one or more of such officers, agents, employees or servants, such powers and duties as it may deem proper. Apparently, the position of President and Chief Executive Officer was created by the board of directors and serves at the pleasure of the board. No statute specifies qualifications to be met, an oath to be taken, duties to be exercised, or term of years to be served. Compensation, in the form of a salary, is fixed by the board of directors and paid to the President and Chief Executive Officer.

It appears that an individual employed as the President and Chief Executive Officer of Santee Cooper does not meet the criteria usually possessed by an office holder. See Op. Atty. Gen. dated June 12, 1992 (President of Horry-Georgetown Technical College does not meet the criteria usually possessed by an office holder). Therefore, based upon the above cited statutory language, it is this Office's opinion that such would be a position of public employment rather than public office. Accordingly, if one were to simultaneously serve as a member of the Francis Marion Board of Trustees and President and Chief Executive Officer of Santee Cooper, it is likely that the dual office holding prohibitions of the South Carolina Constitution would not be violated. However, if a court were to examine this issue, it would pay close attention to the actual duties of the President and Chief Executive Officer to determine whether this individual exercises a portion of the sovereign power of the State.

This letter is an informal opinion only. It has been written by a designated 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.

With kindest regards, I remain

Very truly yours,


Paul M. Koch

Assistant Attorney General