

The State of South Carolina



Office of the Attorney General

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December 3, 1991

The Honorable Angelo Anastopoulos
1367 Winchester Drive
Charleston, South Carolina 29407

Dear Mr. Anastopoulos:

You have asked whether you might serve concurrently on the City of Charleston Recreation Commission and on the Charleston County Mental Health Board 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 advised previously that one who serves on a local mental health board would be considered an office holder for dual office holding purposes. Enclosed is a copy of an opinion dated June 12, 1986, so concluding; other opinions are referenced therein. The reasoning and conclusion expressed therein would be applicable to one serving on the Charleston County Mental Health Board.

You have provided a copy of relevant portions of the City of Charleston's code of ordinances as to the City's Recreation Commission. Section 22-16 establishes the city's department of recreation. Section 22-18(a) states that "[a]n advisory commission for recreation services is

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hereby established." (Emphasis added.) The commission consists of fourteen members appointed by the mayor and confirmed by the city council. No qualifications are specified, nor is a term of office provided. No oath is required, and compensation is not provided for. Duties are provided for in Section 22-18(c), which is labelled "Advisory duties," and include recommending to the mayor, council, and recreation department "courses of action by the city in the area of leisure activities." The commission is also to monitor the use of city recreation facilities and to encourage citizen participation in formulation of recreation policies and use of facilities. These duties are advisory in nature; clearly, any exercise of sovereign power in this instance is by the mayor and council rather than by the recreation commission.

Many of the attributes usually found in an office, most notably the exercise of sovereign power, are absent as to members of the recreation commission. This Office has concluded on numerous occasions that members of advisory commissions would not be considered office holders. Ops. Atty. Gen. dated May 9, 1989 (Indigent Care Advisory Board); May 15, 1989 (Work Support Advisory Council); and others. The reasoning and conclusions reached therein would be applicable here. Thus, a member of the City of Charleston's Recreation Commission, an advisory body, would not be deemed an office holder for dual office holding purposes.

Based on the foregoing, if you were to serve concurrently on the Charleston County Mental Health Board and on the City of Charleston's Recreation Commission, it is our opinion that dual office holding prohibitions of the state Constitution would most probably not be violated.

With kindest regards, I am

Sincerely,

Patricia D. Petway
Patricia D. Petway
Assistant Attorney General

PDP/an
Enclosure

REVIEWED AND APPROVED BY:

Robert D. Cook
Robert D. Cook
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