

# The State of South Carolina

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## Office of the Attorney General

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January 7, 1991

Gaines W. Smith, Esquire  
Post Office Box 578  
Charleston, South Carolina 29402

Dear Mr. Smith:

By your letter of December 6, 1990, you have advised that a member of the Charleston County Board of Social Services was recently elected to be a Commissioner of the St. Andrew's Public Service Commission. You have asked whether such simultaneous service would constitute dual office holding, in contravention 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 on numerous occasions that one who serves on a county board of social services would hold an office for dual office holding purposes. See, for examples, Ops. Atty. Gen. dated March 16, 1989 (copy enclosed); March 2, 1989; and September 7, 1989, as representative of those numerous opinions.

The St. Andrew's Public Service District was established by act of the General Assembly. See Act No. 443, 1949 Acts and Joint Resolutions, as amended particularly by Act No. 502 of 1961 and Act No. 537 of 1965. The governing commission of this body politic and corporate was created by section 3 of Act No. 443 of 1949, as amended by Act No. 502 of 1961. The commission is to consist of five

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qualified electors of St. Andrew's parish of Charleston County, to be elected for terms of four years each. 1/ No oath is required to be taken by these legislative acts, nor is compensation provided for therein. Powers and duties of the commissioners are found in sections 4 et seq. of Act No. 443 of 1949, as amended, and include such actions as executing contracts, exercising the power of eminent domain, promulgating rules and regulations, providing water, sewer, fire protection, and garbage pick-up services and establishing charges therefor, and issuing general obligation notes under the specified circumstances. Clearly these duties involve an exercise of a portion of the sovereign power of the State.

Considering all of the foregoing factors, it is our opinion that one who would serve on the commission of the St. Andrew's Public Service District would hold an office for dual office holding purposes. 2/ Thus, such an individual who would serve simultaneously on the St. Andrew's Public Service District Commission and as a member of a county board of social services would most likely contravene the dual office holding prohibitions of the State Constitution.

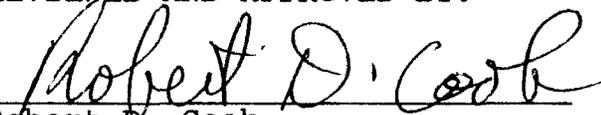
With kindest regards, I am

Sincerely,

*Patricia D. Petway*  
Patricia D. Petway  
Assistant Attorney General

PDP/spp  
Enclosure

REVIEWED AND APPROVED BY:

  
Robert D. Cook  
Executive Assistant for Opinions

1/ Section 3, Act No. 443 of 1949, refers to four year terms "of office." The amendments made by Act No. 502 of 1961, while keeping four year terms, delete the phrase "of office." The later act contains the language "Candidates desiring to seek the office at large. . . ." (Emphasis added.) This is some indication of legislative intent that commissioners be considered officers.

2/ Similarly, this Office has concluded that commissioners of other public service or special purpose districts would be considered office holders for dual office holding purposes. Ops. Atty. Gen. dated October 12, 1990 (Sea Pines Public Service District); September 13, 1990 (North Charleston Public Service District); October 19, 1990 (Saluda County Water and Sewer Authority); and numerous other opinions.