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# The State of South Carolina



## Office of the Attorney General

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July 31, 1992

Carl N. Lundberg, Chief Legal Counsel  
Department of Probation, Parole, and  
Pardon Services  
Post Office Box 50666  
Columbia, South Carolina 29250

Dear Mr. Lundberg:

You have questioned whether an individual may serve concurrently as a probation and parole agent and on the Clarendon County District Two school board.

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, a member of a lawfully and regularly organized fire department, a constable, and 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).

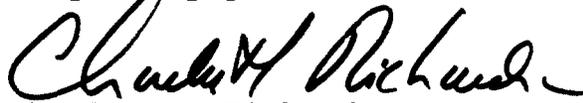
This Office has previously advised that a probation and parole agent empowered with the duties set forth by Section 24-21-280 of the Code would hold an office for dual office holding purposes. See: Opins. Atty. Gen. dated February 6, 1990 and May 16, 1989. The 1989 opinion referenced that the statutory duties of a probation and parole agent include making arrests and issuing warrants and citations, all of which involve an exercise of sovereign power.

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Prior opinions of this Office have recognized that an individual who serves on a district school board of trustees holds an office for dual office holding purposes. See: Opins. Atty. Gen. dated March 2, 1989 and August 8, 1990. We have not located any previous opinion which concludes that a trustee of Clarendon District Two holds an office for dual office holding purposes. Moreover, the position involving membership on the Clarendon County District Two school board does not appear to fall clearly within the scope of prior opinions as to school board members. The only clear duties imposed by law specific to Clarendon County are the submission by the board of the District of the annual District budget to the county board of education and the authority to charge fees. See: Acts Nos. 310 and 311 of 1977. Such limited duties do not fit neatly into the positions addressed in the prior opinions that determined district board members to be officers for dual office holding purposes. Instead, as to the situation involving Clarendon County it appears that any real authority rests with the county governing body or county board. As a result this Office cannot clearly determine that a member of the school board of Clarendon District Two is an officer for dual office holding purposes. Generally, this Office has consistently stated that any doubt as to whether a position is an office for such purposes is resolved against such a conclusion. See: Opins. Atty. Gen. dated October 18, 1988 and January 23, 1989. Similarly, we cannot conclude that an office exists as to a member of the district board of trustees.

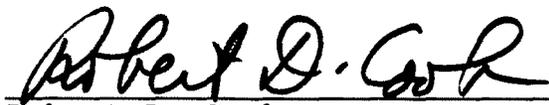
With kind regards, I am

Very truly yours,

  
Charles H. Richardson  
Assistant Attorney General

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REVIEWED AND APPROVED BY:

  
Robert D. Cook  
Executive Assistant for Opinions