

The State of South Carolina

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Office of the Attorney General

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May 15, 1989

The Honorable Ryan C. Shealy
Senator, District No. 24
502 Gressette Building
Columbia, South Carolina 29202

Dear Senator Shealy:

By your letter of May 5, 1989, you have asked for the opinion of this Office on whether one person may serve concurrently on a county council and as a member of the Work Support Advisory Council (a Department of Social Services council) without running afoul of the dual office holding prohibitions of the Constitution of the State of South Carolina.

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 repeatedly held that a member of a county council would hold an office for dual office holding purposes. See, for examples, Ops. Atty. Gen. dated July 9, 1986 (copy enclosed); Op. No. 83-90 dated November 15, 1983; and Op. No. 4176 dated November 7, 1975.

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The South Carolina Department of Social Services, in carrying out its responsibilities under the South Carolina Employables Program Act found in Section 43-5-10 et seq. of the South Carolina Code of Laws (1988 Cum. Supp.), is mandated to establish Work Support Councils. Section 43-5-550(7)(b) specifically provides:

The department [of social services] shall establish a community-based Work Support Council in each of the target areas in which a Work Support Services Unit is operated. The department is also responsible for developing policies and procedures governing the operation of the Council. This Council shall provide input and guidance regarding the operation of that specific DSS Work Support Services Program Unit. The Legislative Delegation shall appoint members in proportion to population of county and the chairmanship shall rotate between counties. All members shall serve terms of four years with no limit on the number of terms that may be served. Membership shall include the business and industrial sector, involved agencies and organizations, and DSS clientele in the targeted area. The membership of the Council shall include, as a minimum, the following composition:

- (1) five members from the involved agencies and organizations;
- (2) five members from the business and industrial sector; and
- (3) two members from DSS clientele.

Reviewing these provisions in terms of the factors found in Sanders v. Belue and State v. Crenshaw, both supra, it would appear that a member of a Work Support Council would not hold an office for dual office holding purposes. While certain qualifications for membership and a term of four years are specified, the duties involve only providing input and guidance to the DSS Work Support Services Unit. No actual exercise of a portion of the sovereign power of the State is involved; that power and its exercise remain with the Department of Social Services.

Based on the foregoing, it is the opinion of this Office that one individual may serve on a county council and on a Work Support Council without running afoul of the dual office holding prohibitions of the State Constitution.

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With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP:sds
Enclosure

REVIEWED AND APPROVED BY:

Robert D. Cook

ROBERT D. COOK
EXECUTIVE ASSISTANT FOR OPINIONS