

The State of South Carolina

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Office of the Attorney General

T. TRAVIS MEDLOCK  
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING  
POST OFFICE BOX 11549  
COLUMBIA, S.C. 29211  
TELEPHONE: 803-734-3970  
FACSIMILE: 803-253-6283

July 13, 1989

The Honorable Lee Blackburn  
1919 Sandhurst Drive  
Florence, South Carolina 29501

Dear Mr. Blackburn:

You have asked whether one may serve concurrently on the Florence County Election Commission and as a member of the Agency Head Salary Commission without contravening 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 opined on numerous occasions that one who serves on a county election commission would hold an office for dual office holding purposes. In particular, the Florence County Election Commission was addressed in Op. Atty. Gen. No. 83-87 (copy enclosed) and in an opinion dated September 24, 1982. Thus, a member of the Florence County Election Commission would be considered an officer for dual office holding purposes.

The Agency Head Salary Commission was established pursuant to Section 8-11-160, Code of Laws of South Carolina (1976, as amended), as follows:

All boards and commissions are required to submit justification of an agency head's performance and salary recommendations to the Agency Head Salary Commission. This commission consists of four appointees of the chairman of the

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House Ways and Means Committee, four appointees of the chairman of the Senate Finance Committee, and three appointees of the Governor with experience in executive compensation.

Salary increases for agency heads must be based on recommendations by each agency board or commission to the Agency Head Salary Commission and their recommendations to the General Assembly.

This statute provides for no oath of office, no compensation for Commission members, and no tenure of a given period of time. The only qualification to be met by Commission appointees is that they have "experience in executive compensation." The duties are not specified by this statute and inferentially consist of whatever actions may be necessary to receive recommendations from state agencies and then to make recommendations to the General Assembly as to agency head salaries; the General Assembly would then be in a position to take whatever action would be required with respect to salaries of agency heads. Making recommendations does not rise to the level of exercising a portion of the sovereign power of the State.

Based on the foregoing, it is the opinion of this Office that a member of the Agency Head Salary Commission would most probably not hold an office for dual office holding purposes. Thus, a member of the Florence County Elections Commission could also serve on the Agency Head Salary Commission without running afoul of 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/an  
Enclosure

REVIEWED AND APPROVED BY:

*Robert D. Cook*

Robert D. Cook  
Executive Assistant for Opinions