

The State of South Carolina



Office of the Attorney General

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March 10, 1988

Cornelia D. Gibbons, ACSW
Executive Director
Children's Foster Care
Review Board System
2221 Devine Street, Suite 418
Columbia, South Carolina 29205-2471

Dear Ms. Gibbons:

By your letter of March 3, 1988, you have advised that you have been asked to serve on the Board of Directors of the Columbia Housing Authority. You have inquired as to whether so serving simultaneously as Executive Director of the Children's Foster Care Review Board System and on the Board of Directors of the Columbia Housing Authority would constitute dual office holding.

Article XVII, § 1A of the South Carolina Constitution provides that "... no person shall hold two offices of honor or profit at the same time." 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 several occasions that one who would serve on a board of directors of a city housing authority would hold an office. Ops. Atty. Gen. dated June 5, 1973 and August 27, 1985, enclosed; also March 7, 1979; September 25, 1980; March 5, 1976; December 18, 1984; November 18, 1986; and October 16, 1987. Thus, we are of the opinion that one who serves on the Board of Directors of the Columbia Housing Authority would hold an office for dual office holding purposes.

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This Office has apparently never considered whether the position of Executive Director of the Children's Foster Care Review Board System would be an office. It is therefore necessary to examine the legislation relative to the System to determine the status of its Executive Director.

Section 20-7-2379 of the Code of Laws of South Carolina (1987 Cum. Supp.) provides for the creation of the South Carolina Board of Directors for Review of Foster Care of Children. The board

is authorized to employ a director who may be paid an annual salary to be determined by the General Assembly. The board may remove the director at any time for any reason. The director shall employ staff as is necessary to carry out the provisions of this subarticle... .

Applying the criteria listed above to the position of executive director, we note that Section 20-7-2379 authorizes but does not create the position of executive director; a salary is authorized. No statute specifies qualifications for the position or provides the duties to be carried out. The executive director is employed at the will of the Board of Directors rather than for a specific term or tenure of years. No oath is required to be taken by the executive director. Thus, most of the criteria usually found in an office are lacking in this instance.

Based on this analysis, we conclude that the Executive Director of the Children's Foster Care Review Board System would be an employee rather than a public officer. We note in this regard, as well, that Section 20-7-2379 authorizes the employment of such a position, rather than appointment to an office. In such a position of employment, the following from Sanders v. Belue, supra, is quite appropriate:

[O]ne who merely performs the duties required of him by persons employing him under an express contract or otherwise, though such persons be themselves public officers, and though the employment be in or about a public work or business, is a mere employee.

Id., 78 S.C. at 174.

In conclusion, it is the opinion of this Office that one may serve simultaneously as Executive Director of the Children's

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Foster Care Review Board System and on the Board of Directors of the Columbia Housing Authority without contravening 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/rhm

Enclosures

REVIEWED AND APPROVED BY:

Robert D. Cook

Robert D. Cook
Executive Assistant for Opinions