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The State of South Carolina



Opinion No 88-8
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Office of the Attorney General

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ATTORNEY GENERAL

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October 18, 1988

Ms. Harriet J. Ferguson
Executive Director
Children's Trust Fund of
South Carolina
Post Office Box 11593
Columbia, South Carolina 29211

Dear Ms. Ferguson:

By your letter of September 29, 1988, you have requested the opinion of this Office as to whether an individual who would serve on the governing board of the Children's Trust Fund of South Carolina would hold an office for dual office holding purposes.

Article XVII, Section 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).

The Children's Trust Fund of South Carolina was established by Act No. 347, 1984 Acts and Joint Resolutions, as "an eleemosynary corporation, the resources of which shall stimulate innovative prevention and treatment programming to meet critical needs of South Carolina's children through the awarding of grants to private nonprofit organizations." Section 20-7-5010, Code of Laws of South Carolina (1987 Cum. Supp.). While it appears to be a close question, it is the opinion of this Office that one who serves on the governing board of this eleemosynary corporation would most probably not hold an office for dual office holding purposes.

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The board of trustees for the Children's Trust Fund is established by Section 20-7-5020 of the Code. Members are to be appointed by the Governor with the advice and consent of the Senate for terms of four years. 1/ Certain requirements, such as residency and knowledge or expertise in fields such as investments, volunteer services, and child-related fields are specified for members. Compensation in the form of per diem, mileage, and subsistence is provided for. No oath is required.

Powers and duties of the board are specified in Section 20-7-5030 of the Code and include assessing critical needs of children, receiving funds from various sources and investing such funds, soliciting proposals to meet children's needs, establishing criteria for awarding grants, and awarding grants to private nonprofit organizations. These duties do not appear to involve an exercise of sovereign powers.

Because this entity has been established as an eleemosynary corporation rather than an agency of the State of South Carolina, and further because the board of trustees do not appear to exercise a portion of the sovereign power of the State of South Carolina, it is our opinion, as stated above, that one who would serve on the board of trustees of the Children's Trust Fund of South Carolina would most probably not hold an office for dual office holding purposes. See Op. Atty. Gen. No. 83-87, a copy of which is enclosed.

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

1/ A term, rather than a "term of office," is specified.